

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

DAR-28540

WORCESTER COUNTY

APPEALS COURT
No. 2021-P-0846

TONY B. GASKINS,

APPELLANT,

v.

ROBERTO BAEZ & others,

APPELLEES.

RECEIVED
SUPREME JUDICIAL COURT

OCT 28 2021

FOR THE COMMONWEALTH
FRANCIS V. KENNEALLY, CLERK

ON APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT

APPELLANT'S BRIEF AND RECORD APPENDIX

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September 30, 2021

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STATEMENT OF THE ISSUES

- I. Whether it was error for the lower court to grant Defendants' Motion For Summary Judgment where Plaintiff's mail items were not properly deemed contraband, pursuant to 103 CMR 481, Inmate Mail regulations?
- II. Whether it was error for the lower court to grant Defendants' Motion For Summary Judgment where Defendants' seizure of the birthday card written with a glitter pen was not seized in accordance with 103 CMR 481.13?
- III. Whether it was error for the lower court to grant Defendants' Motion For Summary Judgment where the seizures of all but five pages of trial transcripts sent by Jose Delacruz and all but five pages of the decision, as well as the legal documents sent by Barbara Babcock, violated the 1st and 14th Amendments, and Articles 12 and 16 of the Massachusetts Constitution?
- IV. Whether if the Plaintiff was denied due process with the seizure of his incoming mail not in compliance with the mail regulations and the 14th Amendment?

STATEMENT OF THE CASE

On 4/10/2018, Mr. Gaskins filed a civil complaint for being denied incoming mail. (R.A. 3)^{1/} On 8/1/2018 Defendants filed a Motion to Dismiss. (R.A. 5). On 10/1/2018, Mr. Gaskins filed his opposition to Defendants' Motion to Dismiss. (R.A. 7). On 4/4/2019 the Motion to Dismiss was Allowed in part and Denied in part. (R.A. 8). On 4/29/2019, Mr. Gaskins filed a Motion to Compel Discovery. (R.A. 8). On 5/8/2019 the Defendants filed their opposition to Gaskins' Motion to Compel Discovery. (R.A. 8). On 5/23/2019, Defendants filed a Motion

^{1/} In reference to the "Record Appendix" will be referred to as "R.A.", and the Complaint will be referred to as "Compl." The Addendum will be referred to as "Add."

for Extension of Time to Respond to Discovery Requests. (R.A. 8). On 6/10/2019, defendants filed their answer to complaint. (R.A. 9). Mr. Gaskins was ordered by the court to file a Motion for Judgment on The Pleadings. On 11/18/2019, Mr. Gaskins filed his Motion For Judgment on the Pleadings. (R.A. 10). On 1/15/2020, a hearing was held on the Motion for Judgment on the Pleadings, where Judge Ricciardone said the Motion for Judgment on the Pleadings was the incorrect motion, and ordered that a Motion for Summary Judgment be filed instead, and denied the motion without prejudice on 1/30/2020. (R.A. 11). On 4/24/2020, Defendants filed their Motion for Summary Judgment. (R.A. 18). On 5/9/2020, Mr. Gaskins filed his opposition to Defendants' Motion for Summary Judgment with supporting memorandum of law. (R.A. 55). On 8/19/2020, Judge Ricciardone allowed Defendants' Motion for Summary Judgment. (R.A. 91). On 8/24/2020, Mr. Gaskins filed a Notice of Appeal. (R.A. 94). This matter is properly before this court to be heard on its merits.

STATEMENT OF THE FACTS

On 7/26/17, Plaintiff was mailed a birthday card and pictures from his daughter, Heshey Sova. The mailroom officers and Captain Williams contraband his birthday card and pictures... Gaskins wrote an informal complaint about not receiving the pictures,..., of his family were [eventually] provided to him, absent the birthday card. Compl. at ¶ 8.

On 8/18/17, Plaintiff was mailed legal documents from his friend, Barbara Babcock, and the mailroom officers and Captain Williams contraband the legal documents. Compl. at ¶ 10. On 10/17/17, Plaintiff was mailed an appeal brief from Jose Delacruz, and Defendant Williams only provided him with five pages of the brief and contraband the rest of it. Compl. at ¶ 11. In response to the trial transcripts, Captain Williams gave it to the paralegal, Defendant Pineda who, in turn, gave Plaintiff only five pages of the six volumes of transcripts, and said that the rest were contraband. Compl. at ¶ 12. Also, Defendant stated to Gaskins that the legal documents would have to be sent back out and mailed into the facility by an attorney or court. Gaskins filed a grievance. Compl. at ¶ 13. There are no such regulations in existence that grants the Defendants from withholding legal documents mailed into the prison by citizens and/or third parties. See 103 CMR 481.15. Compl. at ¶ 14.

ARGUMENT

- I. IT WAS ERROR FOR THE LOWER COURT TO GRANT DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WHERE PLAINTIFF'S MAIL ITEMS WERE NOT PROPERLY DEEMED CONTRABAND, PURSUANT TO 103 CMR 481, INMATE MAIL REGULATIONS.

103 CMR 481.00, et seq. is a promulgated regulation that has the force of law in accordance with Massachusetts law. Where an agency has seen fit to promulgate regulations that affect prisoners, it is black letter law that a prisoner may seek equitable relief if he is harmed by the failure to com-

ply with those regulations. See, e.g., Kenney v. Commissioner of Correction, 393 Mass. 28 (1984); Blake v. Commissioner of Correction, 390 Mass. 537 (1983); Royce v. Commissioner of Correction, 390 Mass. 425 (1983). Indeed, if an agency's violation of a regulation is "consistently repeated," an injured prisoner has an express, not merely implied, cause of action under both the Declaratory Judgment Act, G.L.c. 231A, § 2, and the Administrative Procedure Act, G.L.c. 30A, § 7. Nelson v. Commissioner of Correction, 390 Mass. 379, 387-88 (1983)(prisoners may use G.L.c. 231A, § 2, and G.L.c. 30A, § 7, to resolve questions about the "constructive or validity" of DOC regulations). See Williams v. Secretary of the Executive of Human Services, 414 Mass. 551, 567 n. 10 (1993) (action for declaratory relief provides the necessary cause of action "by which to challenge an administrative agency's non-compliance with its statutory mandate").

103 CMR 481.13(2)(a)-(h) clearly outlines to the Defendants the process that must be adhered to before depriving a prisoner of his/her incoming mail. Not only does none of the sections outlined in section 2(a)-(h) applies to the facts of this case, but it was not applied by the Defendants in assessing whether if they could deprive him of the mail he was deprived of. As mandated by law, here the DOC did not comply with the mail regulations. (R.A. 101).

Nowhere in the Defendants' pleadings did they prove or show that Gaskins had no reasonable expectation of proving an essential element of his case at a trial. Because, in actuality, he easily could prove that his mail was not properly assessed and deemed contraband pursuant to 103 CMR 481.13 (a)-(h), which has the force of law. This is a clear First Amendment and Article 16 violation. Accord Kourouvacilis, 410 Mass. at 716.

II. IT WAS ERROR FOR THE LOWER COURT TO GRANT DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WHERE DEFENDANTS' SEIZURE OF THE BIRTHDAY CARD WRITTEN WITH A GLITTER PEN WAS NOT SEIZED IN ACCORDANCE WITH 103 CMR 481.13.

The lower court in its ruling does not address any of the Plaintiff's claims specifically, and just basically said that the defendants' interpretation and implementation of the 103 CMR 481 regulation was reasonable and passes muster. (R.A. 92).

In the case at bar, the Defendants are regulated pursuant to 103 CMR 481.00, et seq., as well as the Plaintiff's rights are protected under the First and Fourteenth Amendments to the United States Constitution, and Articles 12 and 16 of the Massachusetts Declaration of Rights. What the lower court disregarded is the fact that the Defendants are censoring constitutionally protected expression without adequate justification. See Procunier v. Martinez, 416 U.S. 396, 405 (1974) ("[A] policy of judicial restraint cannot encompass any failure

to take cognizance of valid constitutional claims whether arising in a federal or state institution").

The Procunier Court stated that "[c]ommunications by letter is not accomplished by the act of writing words on paper. Rather, it is effected only when the letter is read by the addressee. Both parties to the correspondence have an interest in securing that result, and censorship of the communication between [them] necessarily impinges on the interest of each. Whatever the status of a prisoner's claim to uncensored correspondence with an outsider, it is plain that the latter's interest is grounded in the First Amendment's guarantee of freedom of speech. And this does not depend on whether the nonprisoner correspondent is the author or intended recipient of a particular letter, for the addressee as well as the sender of direct personal correspondence derives from the First and Fourteenth Amendments a protection against unjustified governmental interference with the intended communication." 416 U.S. at 408-409 (emphasis added).

The United States Supreme Court outlined two prongs, if met, would allow the Defendants to continue to restrict certain incoming correspondence, and that is 1) the regulation or practice in question must further an important or substantial governmental interest unrelated to the suppression of expression, and 2) the limitation of First Amendment

freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved. Procunier v. Martinez, 416 U.S. at 413.

On July 26, 2017, Plaintiff's daughter, Heshey Sova, mailed him a birthday card that was written with a glitter pen. He received a contraband notice stating that, "Item(s) not authorized by 103 CMR 403, Inmate Property Policy." (R.A. 114). Plaintiff filed a grievance and received the following response:

"Your grievance is denied. The mail room was contacted and it has been determined that the mail you were referencing is currently located with contraband mail items due to it being written on with glitter pen. Glitter is considered contraband and will not be allowed within the institution. You have until 10/26/17 to answer the contraband slip to have it mailed out at your expense. If you fail to respond by 10/26/17 the contraband will be disposed of as seen fit by the institution."

(R.A. 115).

Nowhere in the response to the grievance does the prison officials say it is not being allowed because it meets the provisions of 103 CMR 481.13(a)-(h), or stated an important governmental interest unrelated to the suppression of expression to justify restricting the Plaintiff from receiving the birthday card sent to him and written words to him in glitter pen ink, as being a known security threat that would not permit it from entering the facility. It is clear from the re-

cord that the Defendants are taking a "just because we can do it" approach instead of having a legitimate reason behind the directive, a governmental non-existent interest that is clearly unrelated to the suppression of expression. Nowhere in the mail regulations does it state that "glitter mail" is not permitted to enter the facility. So, for the lower court to state that the Defendants' interpretation of the regulation was reasonable is absolutely incorrect, because the interpretation is inconsistent with 103 CMR 481.13(a)-(h), the regulation that applies to this case. Gift cards contain glitter, such as Christmas cards, "I Love You" cards, etc. These such items were permitted without incident for decades. Now the Defendants just want to do away with prisoners accessing this sort of mail items without any reasonable justification.

Lets look at the facts. Mr. Gaskins' daughter mailed him the birthday card in July, 2017. At that time, nor thereafter, was there any policy or notification in place that suggested that glitter was contraband and not allowed into the facility. This may be because no such policy exist.

However, the Plaintiff received through discovery what appears to be two (2) notices: one with the date "December 4, 2017"

-----by Deputy Superintendent, Brian McDonald (R.A. 118), and one
with the date "December 6, 2018" from Deputy Superintendent,
Christopher Phelps (R.A. 119), where they both state:

"Please be advised that this is to serve as a reminder that staff, visitors and volunteers are not allowed to enter the institution while wearing any type of glitter make-up materials.

Additionally, any mail to include cards, letters, etc., containing a glitter type substance will not be allowed into the facility and will be considered contraband.

Glitter or Glitter type products shall not be allowed within the facility unless approved by the superintendent."

First of all, these notices were never viewed by the plaintiff. Second, the notices are not part of a policy or CMR. And if the Defendants are attempting to exclude the birthday card mailed to Mr. Gaskins from his daughter, then pursuant to 103 CMR 481.13(2)(a)-(h)(Mail Regulations) were to be implemented in determining whether to exclude the correspondence. Under that section (h), which would apply to the facts of this case, does not apply due to the fact that the card did not "facilitate the introduction of contraband drugs, etc." Id. This is the mail regulation which have the "force of law," and must be complied with. See Royce v. Commissioner of Correction, 390 Mass. 425, 427 (1983)(Regulations have the "force of law"). The card's written words were in glitter pen. There is nothing in this record that would even suggest that Plaintiff's daughter had secreted some sort of contraband in the written correspondence/birthday card. If it was suspected, it was never tested to see if it did contain some sort of illegal substance that would deem it contraband.

that was not done, although it would have been required to justify non-receivership of the card by Plaintiff.

In former Captain Shelley Williams' admissions, she admits in Response No. 3, "Defendant further admits that at all times relevant to Plaintiff's complaint, any correspondence or items that contained glitter were not allowed into the facility due to safety and security concerns..." (R.A. 120). Captain Williams denies in her admissions that she violated Gaskins' First Amendment rights when she withheld the legal documents mailed from a third party. See Response No. 7. (R.A. 121).

In Defendant Lynch's Interrogatories, he admits that he is required to follow the mail regulations, policies and procedures. See Interrogatory No. 3. (R.A. 124). When Plaintiff posed the question, "Who told you to contraband legal mail mailed into Tony Gaskins from a third party?", Lynch responded that "[t]he mail was seized pursuant to 103 CMR 481, Inmate Mail." Id., at Interrogatory No. 4. He also states in his interrogatories that the regulations that authorizes him to withhold legal mail mailed in to Plaintiff are 103 CMR 481, Inmate Mail, 103 CMR 403, Inmate property, and 103 CMR 430, Inmate Discipline. He says that this also permits him to withhold cards, or letters with glitter as well. Id. at Interrogatories No. 6&7. (R.A. 125).

In regards to the withholding of the glitter written card, Lynch could not identify what staff member implemented

the restriction. He stated, "I have no personal knowledge of what staff members of the Department of Correction created and/or implemented specific Department of Correction regulations, policies, or procedures..." Id. at Interrogatory No. 11. (R.A. 126). What is already known is that the mail regulations does not grant such authority to withhold glitter mail, and there is no written policy in conformance with the mail regulations that states as such. 103 CMR 481 (Mail Regulation) is silent on the subject matter in contrast to the Defendants admissions and interrogatories. 103 CMR 430, Inmate Discipline, does not grant any authority to such an action because it only deals with disciplinary punishment and sanctions. Moreover, the mail procedures of SBCC was provided and approved by the current superintendent on 1/23/18, and as of 4/30/19 - no such mention of glitter is listed within said procedures. (R.A. 129).

The Defendants' attorney of record argued in the lower court that because the DOC is photocopying all incoming non-privileged mail, that this matter was moot. Defendants' Motion and Memorandum of Law, at p. 8. (R.A. 41).^{2/} Although this matter was not addressed in the lower court's ruling, and if the defendants attempt to raise it in the appellate court, the plaintiff contends, as he did in the lower court, that the photocopying of the incoming mail policy is currently under litigation in the matter of Gaskins, et al. v. Turco,

^{2/} Since the lower court failed to address this claim, it should be deemed waived at the appellate level.

Worcester Superior Court No. 1885CV01665. Same counsel for Defendants in this matter is the same in the mail photocopying litigation. The matter withstood dismissal and is still in the discovery phase. Therefore, Mr. Gaskins still have a personal stake in its outcome, whereas the question of censoring speech is still open. See Bornstein v. Board of Registration In Optometry, 403 Mass. 621, 627 (1998)(citation omitted).

It is clear that there are genuine issues of material fact and the lower court erred in allowing the Defendants' Motion for Summary Judgment. See Celotex Corp. v. Catrett, 477 U.S. 317(1986).

III. IT WAS ERROR FOR THE LOWER COURT TO GRANT DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WHERE THE SEIZURES OF ALL BUT FIVE PAGES OF TRIAL TRANSCRIPTS SENT BY JOSE DELACRUZ AND ALL BUT FIVE PAGES OF DECISION^y, AS WELL AS THE LEGAL DOCUMENTS SENT^t BY BARBARA BABCOCK, VIOLATED THE 1st AND 14th AMENDMENTS, AND ARTICLES 12 AND 16 OF THE MASSACHUSETTS CONSTITUTION.

Mr. Gaskins is permitted to correspond with other prisoners not within the Department of Correction in Massachusetts. See 103 CMR 481.20(5). One such prisoner Mr. Gaskins has been corresponding with and helping with legal matters is Jose Delacruz, who is currently incarcerated in New Jersey State Prison. Receiving legal documents from Mr. Delacruz has never been a problem until this particular point in time and thereafter. Mr. Delacruz mailed Plaintiff a decision

he received from the federal court in New Jersey which contained fifteen pages and sent Mr. Gaskins only five pages. In the contraband notice, it states: "Item(s) not authorized by 103 CMR 403, Inmate Property Policy." (R.A. 143). Mr. Gaskins grieved the matter and received the following response:

"Grievance is denied. Incoming mail containing legal documents, but not mailed by an authorized person listed in 103 CMR 481.10 is not considered privileged mail. The contents of the mail were photocopies attached to personal correspondence forwarded by a person not specified in section 10, thus considering the material a "publication" where inmates are allowed to receive a maximum of five (5) pages per day."

(R.A. 144-147).

The correspondence contained legal documents, not any sort of "publications" as suggested by the Defendants in their grievance response and argument before the lower court. However, the lower court disregarded this fact and said that it was okay for the Defendants to do this. This, too, applies as for withholding of the legal documents sent to him through his friend, Barbara Babcock, when she mailed him a federal decision in a case Mr. Gaskins was helping her son with as permitted under Johnson v. Avery, 393 U.S. 483 (1969), which provides him with the protection as a jailhouse lawyer to assist other inmates in legal matters. See (R.A. 148-150). This same tactic of the Defendants was done to Plaintiff in

a case that same counsel in this matter is on, where Plaintiff mailed to his co-plaintiff, Michael Hunter, a "Motion For TRO and Preliminary Injunction" in Worcester Superior Court No. 1885CV01665D, and he was only provided five pages. Defendant Silva, who is the one committed this act, is the person being sued in this matter. This is a clear interference of Plaintiff's access to the courts and his co-plaintiff in a different case argued by current counsel (Heidi D. Handler) for Defendants as mootting his glitter mail claim. The actions of the Defendants are in direct violation of the decree in Matthews v. Marshall, et al., Suffolk Superior Court No. 1998-SUCV-6041. To say the legal documents constitute a publication flies in the face of the law and its mandates.

Legal mail is legal mail, whether if it's sent "privileged mail" from an attorney, court officer, or from a third party citizen. There is no confusion here and the Defendants cannot be allowed to play ignorant to this fact as is the case with the lower court's ruling. This is why the DOC never, in the past, tampered with any legal mail sent into the facility. The policy of five pages per publication only pertains to copies of internet publications being mailed in. See Guzz v. Dennehy, 25 Mass. L. Rep. 207 (2009)(where it held the DOC changed its policy so as to permit prisoners to receive up to five pages per day of extractions from internet publications through the mail).

In Defendant Lynch's Interrogatories response concerning this subject matter, he states that the legal mail was seized pursuant to 103 CMR 481, Inmate Mail. (R.A. 124). He would not respond to the question if he was aware that legal mail is protected speech under the First Amendment. (R.A. 125). He also answers that 103 CMR 481, Inmate Mail, 103 CMR 403, Inmate Property, and 103 CMR 430, Inmate Discipline, grants him to withhold legal mail from a third party entering the facility. Id.

The rationale of the defendants are that because the legal documents were photocopied and mailed in, that they were being treated as "publications" is a blatant abuse of authority and regulatory powers, and the lower court's ruling in upholding this was error. The regulation definition of what a publication is as follows:

"Publication — any book, booklet, pamphlet, magazine, periodical, newsletter, newspaper or similar document, including stationary and greeting cards, published by any individual, organization, company, or corporation which is distributed or made available through any means or media for a commercial purpose. This definition includes any portion extracted, photocopied, or clipped from such items."
103 CMR 481.06.

See Royce v. Commissioner of Correction, 390 Mass. 425, 427-428 (1983)("Once an agency has seen fit to promulgate regulations, it must comply with those regulations"). In this case the Defendants are deliberately failing to comply

with the publication section of the regulation, supra.

The Defendants continuously refer to 103 CMR 403, Inmate Property Policy as authorizing them to withhold the card, legal mail, etc. Looking at the property regulation, there is nothing within that regulation concerning the subject matter at hand in this complaint. Therefore, that regulation, as suggested by the Defendants, does not apply to the facts of this case. What does apply to this case are the mail regulations. The mail regulations grant no such authority to the Defendants. It is apparent from this record that this is an unconstitutional suppression of speech, which is a factor the lower court failed to assess before coming to its conclusion. It incorrectly applied Turner v. Safley.

In Turner v. Safley, 482 U.S. 78 (1987), the United States Supreme Court held that "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution." Id. at 84 (emphasis added). In doing so, the Court outlined criterias to be followed: 1) there must be a "valid, rational connection" between the prison regulation and the legitimate governmental interest put forward to justify it, 2) whether there are alternative means of exercising the right that remain open to prison inmates, 3) the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison

resources generally, and 4) the absence of ready alternatives is evidence of the reasonableness of a prison regulation. Id. at 90. The lower court states that the actions of the Defendants were reasonable, however, that is incorrect.

Looking at the facts of this case and what Turner v. Safley requires to show the Defendants meet the exceptions to violate Gaskins' First Amendment Rights has not been shown here. First, there is no "valid, rational connection" between the prison policy (not regulation), and the interest put forward to justify it. The response states that it violates prison policy, not pointing to some valid security concern that "may" justify it. And, as far as the so-called "glitter" policy goes, it does not exist. It is a made up action by apparently the superintendent, and maybe the commissioner - who is now the secretary of public safety. It is a "directive" as noted by the Defendants response to the Plaintiff's grievances. (R.A. 150-151).

The next thing is that the "directive" is not reasonably related to a legitimate governmental interest. Such restrictions placed on the mail does not meet the reasonableness standard of Turner v. Safely, supra. This disapproval of incoming mail must be done on a case-by-case basis, not in a blanket policy ban as is the case here. See 103 CMR 481.13(2) (a)-(h). Therefore, the Defendants actions here are not

reasonable (contrary to the lower court's ruling), and fails the second test of Turner v. Safely, supra. The third factor is the impact accommodation of the asserted constitutional right, i.e., First Amendment and Article 16 of the Massachusetts Declaration of Rights, will have on guards or other inmates, and the allocation of prison resources generally. First, the allocation of prison resources has fundamentally increased due to the constant screening of all incoming mail that is being seized wrongfully and unlawfully by the Defendants under the guise of "just because." And the Defendants not seizing the mail contrary to the regulations, will have no ramifications on the liberty of others or on the use of prison's limited resources for preserving institutional order.

There would be no "ripple effect" if the Defendants were mandated to stop this practice recently implemented. This is more of a burden on the inmates than staff because its depriving prisoners of documents not deemed a threat to enter, and that is borne out in co-plaintiff's letter(s). (Add. 1-4.). The Defendants only provided him with five pages of an injunction motion filed by Gaskins to him. Is that a publication? The defendants can make out no reasonable justification for interfering with Plaintiff's access to the courts. That is what all of the withheld legal documents entails - interfering with court access. Moreover, the only situation

here where the absence of a ready alternative applies is the "glitter" policy/directive. In a situation as such, the alternative is that the glitter can be tested if its believed that it may contain contraband in it. The regulation permits such discretion. To date, however, there has been no evidence produced by the Defendants to justify such a directive and/or policy. The only thing produced by counsel was an affidavit that is an "ipse dixit" affidavit which supported nothing concretely of the Defendants' assertions, and the judge never weighed in on it in coming to his ruling. What should have been done in this case was a case-by-case testing. That would have fully accommodated the prisoner's rights at a de minimis cost to valid penological interests, as well as cutdown on violation of First Amendment and Article 16 protections afforded prisoners within the Department of Correction.

Here, the prison officials have substantially burdened the Plaintiff on the free exercise of receiving legal mail, legal documents, cards and brochures from outside sources. Allowing Mr. Gaskins to continue receiving this information without interference, would not unduly burden the Defendants so-called interest. See Rasheed v. Commissioner of Correction, 446 Mass. 463, 467 (2006)(If such burden exists, the prison must show that "1) it has an interest sufficiently compelling to justify that burden and 2) the granting of an exemption to persons in [the inmate's] position would unduly burden

that interest"). This standard was not met here by the Defendants, and it was error for the lower court to grant their motion for summary judgment.

IV. THE PLAINTIFF WAS DENIED DUE PROCESS WITH THE SEIZURE OF HIS INCOMING MAIL NOT IN COMPLIANCE WITH THE MAIL REGULATIONS AND THE 14th AMENDMENT.

The due process clause prohibit prison officials from depriving Plaintiff of "life, liberty, or property without due process of law." U.S. Const. Amend. XIV. Substantive due process is what the Plaintiff contends he was denied. That is so because "substantive due process"... refers to the protections of the First, Fourth, Sixth and Eighth Amendments. See Fundiller v. City of Cooper City, 777 F.2d 1436, 1440 (11th Cir. 1985). That is because these amendments initially applied only to the federal government. They now apply to the states because they are considered to be "incorporated" in the Fourteenth Amendment's Due Process Clause, which does not apply to the states. See Duncan v. Louisiana, 391 U.S. 145, 147-148 (1968).

In 103 CMR 481.08, it states: "Except as provided in 103 CMR 481.09, there shall be no limitation placed on the number of persons with whom an inmate may correspond, nor shall there be any limitation on the number of letters an inmate may send or receive." In 103 CMR 481.13(1) Incoming Correspondence, it states: "It is the policy of the Massa-

chusetts Department of Correction not to read, censor, or disapprove incoming correspondence, except where necessary to protect legitimate governmental interests."

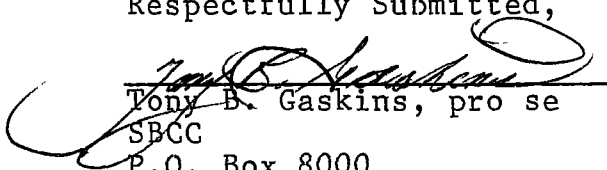
The Defendants discretion is limited. See Kentucky Dept. of Correction v. Thompson, 490 U.S. 454, 460 (1989). Before such deprivation, due process was required and was not afforded Mr. Gaskins.

CONCLUSION

For the reasons stated herein, the lower court's ruling should be reversed and the matter remanded back to the superior court, or, in the alternative, this court should rule on the merits of his appeal.

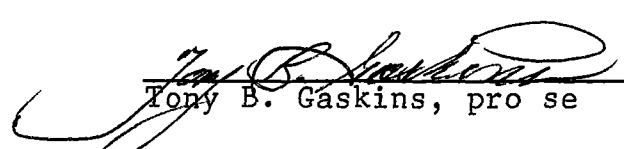
Respectfully Submitted,

Dated: 10/4/21


Tony B. Gaskins, pro se
SBCC
P.O. Box 8000
Shirley, Ma. 01464

CERTIFICATE OF COMPLIANCE


I, Tony B. Gaskins, certify that this Appeal Brief is submitted in compliance with mass. R. App. P. 16k.


Tony B. Gaskins, pro se

CERTIFICATE OF SERVICE

I, Tony B. Gaskins, certify that I caused a true copy of the "Appeal Brief" with Record Appendix to be served upon, Heidi D. Handler, Esq., Department of Correction, Legal Division, 70 Franklin Street, Suite 600, Boston, Ma. 02110-1327, by first class mail, postage prepaid.

Dated: 10/4/21


Tony B. Gaskins, pro se

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

WORCESTER COUNTY

APPEALS COURT
No. 2021-P-0846

TONY B. GASKINS,

APPELLANT,

v.

ROBERTO BAEZ & others,

APPELLEES.

RECORD APPENDIX

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**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

1885CV00554 Gaskins, Tony B vs. Steven Silva As Superintendent Of Souza Baranowski Correctional Center et al

CASE TYPE: Civil Actions with Incarcerated Party	FILE DATE: 04/10/2018
ACTION CODE: PE1	CASE TRACK: F - Fast Track
DESCRIPTION: Administrative Action involving an Incarcerated Party	
CASE DISPOSITION DATE: 08/19/2020	CASE STATUS: Open
CASE DISPOSITION: Summary Judgment	STATUS DATE: 04/10/2018
CASE JUDGE:	CASE SESSION: Civil A

PARTIES

Plaintiff Gaskins, Tony B W52145 P O Box 8000 Souza Baranowski Correctional Center Shirley, MA 01464 Defendant Roberto Baez, Correctional Officer Defendant Roger Dery, Correctional Officer Defendant Steven Silva As Superintendent Of Souza Baranowski Correctional Center	Attorney PROPER Pro Se Massachusetts Bar Added Date 04/10/2018 Attorney 561474 Heidi Dale Handler Massachusetts Department of Correction Massachusetts Department of Correction Legal Division 70 Franklin Street Suite 600 Boston, MA 02110 Work Phone (617) 727-3300 Added Date: 02/11/2020 Attorney 561474 Heidi Dale Handler Massachusetts Department of Correction Massachusetts Department of Correction Legal Division 70 Franklin Street Suite 600 Boston, MA 02110 Work Phone (617) 727-3300 Added Date: 02/11/2020 Attorney 561474 Heidi Dale Handler Massachusetts Department of Correction Massachusetts Department of Correction Legal Division 70 Franklin Street Suite 600 Boston, MA 02110 Work Phone (617) 727-3300 Added Date: 02/11/2020 <div style="text-align: right; margin-top: 20px;"><i>R.A. 1</i></div>
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COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report

Defendant Thomas Lynch, Correctional Officer	Attorney Heidi Dale Handler Massachusetts Department of Correction Massachusetts Department of Correction Legal Division 70 Franklin Street Suite 600 Boston, MA 02110 Work Phone (617) 727-3300 Added Date: 02/11/2020	561474
Defendant Vicki Pineda, Paralegal	Attorney Heidi Dale Handler Massachusetts Department of Correction Massachusetts Department of Correction Legal Division 70 Franklin Street Suite 600 Boston, MA 02110 Work Phone (617) 727-3300 Added Date: 02/13/2020	561474
Defendant Williams, Cpt. Shelley	Attorney Heidi Dale Handler Massachusetts Department of Correction Massachusetts Department of Correction Legal Division 70 Franklin Street Suite 600 Boston, MA 02110 Work Phone (617) 727-3300 Added Date: 02/11/2020	561474
Holding Institution Souza Baranowski Correctional Center P. O. Box 8000 Shirley Center, MA 01464		

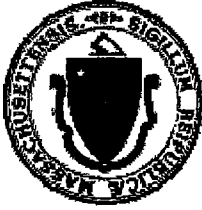
R.A. 2



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

INFORMATIONAL DOCKET ENTRIES

Date	Ref	Description	Judge
04/10/2018		Case assigned to DCM Track F - Fast Track was added on 04/10/2018	
04/10/2018		Attorney appearance On this date Pro Se added for Plaintiff Tony B Gaskins	
04/10/2018	1	Original civil complaint filed	
04/10/2018	2	Civil action cover sheet filed	
04/10/2018		Demand for jury trial entered	
04/10/2018	3	Plaintiff files Uniform Counsel Certification	
		Applies To Gaskins, Tony B (Plaintiff)	
04/10/2018	4	RESTRICTED INFORMATION - Affidavit of Indigency and request for waiver substitution of state payment of fees and costs filed without Supplemental affidavit	
04/10/2018	5	ORDER Canteen Order	Mulqueen
		Judge Mulqueen, Hon. Jane E	
04/10/2018	6	General correspondence regarding Tracking order, canteen order, summons mailed to plaintiff at SBCC on 04/11/18	
		Applies To Gaskins, Tony B (Plaintiff)	
04/12/2018	7	RESTRICTED INFORMATION - Plaintiff / Petitioner's canteen account filed	
04/20/2018	8	RESTRICTED INFORMATION - Determination regarding normal fees and costs REFERRED TO A JUDGE waived in part \$100.00, pursuant to G L c 261, § 27C(2). Notices mailed 04/24/2018	Mulqueen
		Judge Mulqueen, Hon. Jane E	
04/20/2018	9	Plaintiff Tony B Gaskins's Motion to make service by regular mail	
04/20/2018		Endorsement on Motion to make service by regular mail (#9 0) DENIED Notices mailed 04/24/2018	Mulqueen
		Judge. Mulqueen, Hon. Jane E	
04/24/2018	10	RESTRICTED INFORMATION - Plaintiff / Petitioner's canteen account filed	
04/26/2018		Pleading titled, Affidavit of Tony B. Gaskins Establishing Proof of Service of Process on Defendants, in addition to Summons for Steven Silva, Roberto Baez, Vicki Pineda, Shelley Williams, Thomas Lynch, Roger Dery, filed with the court on 04/26/2018, returned to Tony B Gaskins Motion to make service by regular mail was denied as of 04/20/2018 (In RE. p. 9)	
04/26/2018		General correspondence regarding Mailed Plaintiff 6 new Summons on 04/26/2018	R.A.3



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

05/11/2018	11	Service Returned for Defendant Steven Silva As Superintendent Of Souza Baranowski Correctional Center: Service via certified mail; Service made on 04/02/2018 (Green card attached)
05/11/2018	12	Service Returned for Defendant Roberto Baez, Correctional Officer: Service via certified mail; Service made on 04/02/2018 (Green card attached)
05/11/2018	13	Service Returned for Defendant Williams, Cpt. Shelley: Service via certified mail, Service made on 04/02/2018. (Green card attached)
05/11/2018	14	Service Returned for Defendant Thomas Lynch, Correctional Officer: Service via certified mail, Service made on 04/02/2018 (Green card attached)
05/11/2018	15	Service Returned for Defendant Roger Dery , Correctional Officer. Service via certified mail; Service made on 04/02/2018. (Green card attached)
05/11/2018	16	Summons, returned INCOMPLETE Service made via certified mail- Green Card not endorsed Applies To: Vicki Pineda, Paralegal (Defendant)
06/01/2018		Attorney appearance On this date Jennifer Mary Staples, Esq. added for Defendant Steven Silva A Superintendent Of Souza Baranowski Correctional Center
06/01/2018		Attorney appearance On this date Jennifer Mary Staples, Esq. added for Defendant Cpt Shelley Williams
06/01/2018		Attorney appearance On this date Jennifer Mary Staples, Esq. added for Defendant Thomas Lynch Correctional Officer
06/01/2018		Attorney appearance On this date Jennifer Mary Staples, Esq. added for Defendant Roger Dery , Correctional Officer
06/01/2018		Attorney appearance On this date Jennifer Mary Staples, Esq. added for Defendant Roberto Baez, Correctional Officer
06/01/2018		Attorney appearance On this date Jennifer Mary Staples, Esq. added for Defendant Vicki Pineda, Paralegal
06/01/2018	17	Defendant Steven Silva As Superintendent Of Souza Baranowski Correctional Center, Cpt Shelley Williams, Thomas Lynch, Correctional Officer, Roger Dery , Correctional Officer, Roberto Baez, Correctional Officer, Vicki Pineda, Paralegal's Motion to Waive Rule 9A (Certificate of Service attached)

R.A. 4



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

06/01/2018	18	Defendant Steven Silva As Superintendent Of Souza Baranowski Correctional Center, Cpt. Shelley Williams, Thomas Lynch, Correctional Officer, Roger Dery , Correctional Officer, Roberto Baez, Correctional Officer, Vicki Pineda, Paralegal's Motion to Enlarge (Up to and including July 31, 2018)	
(Certificate of Service attached)			
06/11/2018		Endorsement on Motion to Enlarge (Up to and including July 31, 2018) (#18 0). ALLOWED Changed in header and tracking order sent 06/18/2018	Mulqueen
Judge: Mulqueen, Hon. Jane E			
08/01/2018	19	Defendant Steven Silva As Superintendent Of Souza Baranowski Correctional Center, Cpt. Shelley Williams, Thomas Lynch, Correctional Officer, Roger Dery , Correctional Officer, Roberto Baez, Correctional Officer, Vicki Pineda, Paralegal's Motion to Dismiss	
(Certificate of Service attached)			
08/01/2018	19.1	Steven Silva As Superintendent Of Souza Baranowski Correctional Center, Cpt. Shelley Williams, Thomas Lynch, Correctional Officer, Roger Dery , Correctional Officer, Roberto Baez, Correctional Officer, Vicki Pineda, Paralegal's Memorandum in support of their Motion to Dismiss	
(Certificate of Service attached)			
08/13/2018	20	Plaintiff Tony B Gaskins's Motion to Strike	
08/13/2018	21	Plaintiff Tony B Gaskins's Motion to Compel Discovery	
08/13/2018	22	Certificate of service of attorney or Pro Se. Pro Se Tony B Gaskins (RE p 20 & 21)	
08/15/2018		The following form was generated Notice to Appear Sent On 08/15/2018 10:26:50	
08/16/2018		Endorsement on Motion to Strike (#20 0): Other action taken Defendants have 30 days to file any opposition/ response. Notices mailed 08/16/2018 Judge Wrenn, Hon. Daniel M	Wrenn

R.A.S



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

08/27/2018	23	Opposition to Plaintiff's Motion to Stike filed by Steven Silva As Superintendent Of Souza Baranowski Correctional Center, Cpt. Shelley Williams, Thomas Lynch, Correctional Officer, Roger Dery , Correctional Officer, Roberto Baez, Correctional Officer, Vicki Pineda, Paralegal (RE. p. 20)	
		(Certificate of Service attached)	
09/04/2018		Endorsement on Motion to Strike. (#20 0) DENIED Plaintiff shall have 30 days to file an opposition to Defendants Motion to Dismiss.	Wrenn
		Notices mailed · 09/05/2018	
		Judge Wrenn, Hon. Daniel M	
09/05/2018		Event Result: Rule 12 Hearing scheduled on 10/09/2018 02:00 PM Has been. Rescheduled For the following reason. By Court prior to date Hon. Sharon Donatelle, Presiding Appeared: Staff	Donatelle
09/05/2018		The following form was generated.	
		Notice to Appear Sent On. 09/05/2018 10:35 12	
09/24/2018	24	Defendant Steven Silva As Superintendent Of Souza Baranowski Correctional Center, Cpt Shelley Williams, Thomas Lynch, Correctional Officer, Roger Dery , Correctional Officer, Roberto Baez, Correctional Officer, Vicki Pineda, Paralegal's Motion to Advance and Continue Hearing Date	
		(Certificate of Service attached)	
09/25/2018		Endorsement on Motion to Advance and Continue Hearing Date (#24 0). ALLOWED Clerks to schedule new hearing date	Wrenn
		Notices mailed · 09/26/2018	
		Judge Wrenn, Hon Daniel M	
09/26/2018		Event Result: Rule 12 Hearing scheduled on 11/15/2018 02:00 PM Has been Rescheduled For the following reason: Request of Defendant Hon Sharon Donatelle, Presiding Appeared: Staff: Cheryl Riddle, Assistant Clerk Magistrate	Donatelle
09/26/2018		The following form was generated	
		Notice to Appear Sent On 09/26/2018 09 29 45	R.A. 6



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

10/01/2018	25	Plaintiff Tony B Gaskins's Motion for a Hearing	
10/01/2018	26	Plaintiff Tony B Gaskins's Motion for Writ of Habeas Corpus Ad-Testificandum	
10/01/2018	27	Opposition to Defendants' Motion to Dismiss filed by Tony B Gaskins (RE p. 19)	
10/01/2018	27.1	Tony B Gaskins's Memorandum in support of Plaintiffs' Opposition to Defendants' Motion to Dismiss (Certificate of Service attached)	
10/11/2018		Habeas corpus issued as to Tony B Gaskins at MCI - Norfolk for 11/20/2018 02 00 PM Rule 12 Hearing Judge Donatelle, Hon. Sharon	Donatelle
10/11/2018		Endorsement on Motion for a Hearing (#25.0): ALLOWED Notices mailed 10/15/2018 Judge Donatelle, Hon. Sharon	Donatelle
10/11/2018		Endorsement on Motion for Writ of Habeas Corpus Ad-Testificandum (#26.0) ALLOWED Notices mailed 10/15/2018 Judge Donatelle, Hon. Sharon	Donatelle
11/20/2018		Matter taken under advisement Rule 12 Hearing scheduled on 11/20/2018 02 00 PM Has been Held - Under advisement Comments FTR - 3:13 PM Hon. Sharon Donatelle, Presiding Appeared. Staff Cheryl Riddle, Assistant Clerk Magistrate	Donatelle
04/04/2019		Endorsement on Motion to Dismiss (#19.0): Other action taken Allowed in part and Denied in part See Memorandum of Decision and Order on Defendants Motion to Dismiss Notices mailed : 04/12/2019	Donatelle

R.A. 7



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

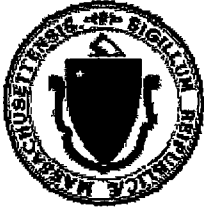
04/12/2019	28	MEMORANDUM & ORDER.	Donatelle
ON DEFENDANTS MOTION TO DISMISS			
<p>For the aforementioned reasons, it is ORDERED that the Defendants Motion to dismiss is DENIED in part, and ALLOWED in part. The Defendants motion to dismiss is DENIED with respect to the Plaintiffs challenge to the constitutionality of the glitter ban policy; the claims pursuant to the First and Fourteenth Amendments of the United States Constitution against the defendants in their individual capacities and articles 12 and 16 of the Massachusetts Declaration of Rights, and the Plaintiff's request for declaratory relief under G.L c 231A § 2 The Defendants Motion to Dismiss is ALLOWED as to a violation of Matthews v. Marshall Suff. Superior. Ct No 1998-SUCV-6041; the constitutionality of regulations relating to sexually explicit material; and § 1983 claims against the defendants in their official capacities</p> <p>Entered and copies mailed 04/12/2019</p> <p>Judge: Donatelle, Hon Sharon</p>			
04/29/2019	29	Plaintiff Tony B Gaskins's Motion to Compel Discovery	
(Certificate of Service attached)			
05/03/2019	30	Opposition to Plaintiff's Motion to Compel Discovery (RE: p 29) filed by Steven Silva As Superintendent Of Souza Baranowski Correctional Center, Cpt Shelley Williams, Thomas Lynch, Correctional Officer, Roger Dery , Correctional Officer, Roberto Baez, Correctional Officer, Vicki Pineda, Paralegal	
(Certificate of Service attached)			
05/08/2019		Endorsement on Motion to Compel Discovery (#29.0) Other action taken After review of the record & pleadings the motion to compel is DENIED for the reasons stated in defendants opposition	Kenton-Walker
Notices mailed : 05/08/2019			
05/08/2019	31	Response to Defendant's Opposition to Plaintiff's Motion to Compel Discover (p#30) filed by *with supporting memorandum & exhibits appended to	
05/23/2019	32	Defendants Steven Silva As Superintendent Of Souza Baranowski Correctional Center, Cpt. Shelley Williams, Thomas Lynch, Correctional Officer, Roger Dery , Correctional Officer, Roberto Baez, Correctional Officer Vicki Pineda, Paralegal's Motion for an Extension of Time to Respond to Discovery Requests	
(Certificate of Service attached)			
05/29/2019		Endorsement on Motion to Waive Rule 9A. (#17.0): ALLOWED Nun pro tunc to 06/01/2018	Kenton-Walker
Notices mailed 06/04/2019			

R.A. S



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

05/29/2019		Endorsement on Motion for an Extension of Time to Respond to Discovery Requests (#32 0) ALLOWED Changed in header and tracking order sent : 06/04/2019	Kenton-Walker
06/10/2019	33	Received from Defendant Steven Silva As Superintendent Of Souza Baranowski Correctional Center Answer with claim for trial by jury, (Certificate of Service attached)	
06/10/2019		Received from Defendant Williams, Cpt Shelley Answer with claim for trial by jury, (Certificate of Service attached)	
06/10/2019		Received from Defendant Thomas Lynch, Correctional Officer. Answer with claim for trial by jury, (Certificate of Service attached)	
06/10/2019		Received from Defendant Roger Dery , Correctional Officer Answer with claim for trial by jury, (Certificate of Service attached)	
06/10/2019		Received from Defendant Roberto Baez, Correctional Officer Answer with claim for trial by jury, (Certificate of Service attached)	
06/10/2019		Received from Defendant Vicki Pineda, Paralegal: Answer with claim for trial by jury, (Certificate of Service attached)	
08/30/2019		The following form was generated. Notice to Appear Sent On: 08/30/2019 09 31 58	
09/11/2019	35	General correspondence regarding Letter from plaintiff requesting copy of opposition to Motion.	
09/13/2019	34	Plaintiff Tony B Gaskins's Motion for extension of time to file his motion for judgment on the pleadings	
09/16/2019		General correspondence regarding Copy of Re # 27 - 27 1 mailed 09/16/2019	
09/19/2019		Endorsement on Motion for extension of time to file his motion for judgment on the pleadings (#34 0). ALLOWED Changed in header and tracking order sent 09/24/2019	Wrenn
11/12/2019	36	Plaintiff Tony B Gaskins's Motion to compel the defendants attorney of record to provide him with copies of the discovery	R.A. 9



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

11/18/2019	37	Plaintiff Tony B Gaskins's Motion for writ of habeas corpus ad-testificandum, with memorandum of law in support	
11/18/2019	37 1	Plaintiff Tony B Gaskins's Motion for Judgment on the pleadings	
11/19/2019		Habeas corpus issued as to Tony B Gaskins at MCI - Concord for 12/12/201 02 00 PM Hearing for Judgment on Pleading.	White
		Judge. White, Jr., Hon William M	
11/21/2019	38	Opposition to p#36, plaintiff's motion to compel the defendants' attorney of record to provide him with copies of the discovery, filed by Steven Silva As Superintendent Of Souza Baranowski Correctional Center,et al.	
		Applies To Steven Silva As Superintendent Of Souza Baranowski Correctional Center (Defendant); Williams, Cpt. Shelley (Defendant); Thoma Lynch, Correctional Officer (Defendant); Roger Dery , Correctional Officer (Defendant); Roberto Baez, Correctional Officer (Defendant); Vicki Pineda, Paralegal (Defendant)	
11/27/2019	39	Defendant Steven Silva As Superintendent Of Souza Baranowski Correctional Center's Motion to advance and continue hearing date	
12/04/2019		Endorsement on Motion to advance and continue hearing date. (#39 0) ALLOWED Notices mailed 12/06/2019	White
12/05/2019		Event Result: Hearing for Judgment on Pleading scheduled on 12/12/2019 02 00 PM Has been Not Held For the following reason: Request of Defendant Hon. William M White, Jr., Presiding Staff Cheryl Riddle, Assistant Clerk Magistrate	White
12/05/2019		Event Result: Motion Hearing scheduled on. 12/12/2019 02.00 PM Has been Rescheduled For the following reason: Request of Defendant Hon. William M White, Jr., Presiding Staff Cheryl Riddle, Assistant Clerk Magistrate	White
12/05/2019		The following form was generated Notice to Appear Sent On 12/05/2019 11 05.00	
12/05/2019		The following form was generated. Notice to Appear Sent On: 12/05/2019 11 06.26	

R.A. 10



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

12/05/2019		Habeas corpus issued as to Tony B Gaskins at MCI - Concord for 01/30/202 White 02 00 PM Hearing for Judgment on Pleading 12/12/19 cancelled and rescheduled to this date 1/30/20 at 2.00pm. Please cancel HABE for 12/12/19.	
		Judge White, Jr, Hon. William M	
01/15/2020		Event Result Motion Hearing scheduled on 01/30/2020 02:00 PM Has been. Canceled For the following reason. By Court prior to date Hon Daniel M Wrenn, Presiding Staff. Cheryl Riddle, Assistant Clerk Magistrate	Wrenn
01/15/2020		Event Result Hearing for Judgment on Pleading scheduled on. 01/30/2020 02:00 PM Has been Rescheduled For the following reason Transferred to anothe session Hon Daniel M Wrenn, Presiding Staff Cheryl Riddle, Assistant Clerk Magistrate	Wrenn
01/30/2020		Matter taken under advisement Hearing for Judgment on Pleading schedul Ricciardone on. 01/30/2020 02 00 PM Has been Held - Under advisement Comments FTR Room 19 Hon David Ricciardone, Presiding Staff Gail Dempsey, Assistant Clerk Magistrate	
01/30/2020		Endorsement on Motion for judgment on the pleadings (#37 1) DENIED Ricciardone without prejudice The Tracking order is extended as discussed at hearing in anticipation of motions for summary judgment Notices mailed 02/05/2020	
02/05/2020	40	Opposition to P#37.1 Plaintiff's Motion for Judgment on the Pleadings filed b Steven Silva As Superintendent Of Souza Baranowski Correctional Center	
02/05/2020	41	Defendant Steven Silva As Superintendent Of Souza Baranowski Correctional Center's Motion for Leave to Withdraw and Substitute Counsel.	
02/11/2020		Endorsement on Motion for Leave to Withdraw and Substitute Counsel Wrenn (#41 0) ALLOWED Notices mailed 02/13/2020	
02/11/2020		Attorney appearance On this date Heidi Dale Handler, Esq. added for Defendant Vicki Pineda, Paralegal	
02/11/2020		Attorney appearance On this date Jennifer Mary Staples, Esq dismissed/withdrawn for Defendant Steven Silva As Superintendent Of Souza Baranowski Correctional Center	

R.A. 11



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

02/11/2020		Attorney appearance On this date Heidi Dale Handler, Esq. added for Defendant Steven Silva As Superintendent Of Souza Baranowski Correctional Center
02/11/2020		Attorney appearance On this date Jennifer Mary Staples, Esq. dismissed/withdrawn for Defendant Cpt. Shelley Williams
02/11/2020		Attorney appearance On this date Heidi Dale Handler, Esq. added for Defendant Cpt. Shelley Williams
02/11/2020		Attorney appearance On this date Jennifer Mary Staples, Esq. dismissed/withdrawn for Defendant Thomas Lynch, Correctional Officer
02/11/2020		Attorney appearance On this date Heidi Dale Handler, Esq. added for Defendant Thomas Lynch, Correctional Officer
02/11/2020		Attorney appearance On this date Jennifer Mary Staples, Esq. dismissed/withdrawn for Defendant Roger Dery, Correctional Officer
02/11/2020		Attorney appearance On this date Heidi Dale Handler, Esq. added for Defendant Roger Dery, Correctional Officer
02/11/2020		Attorney appearance On this date Jennifer Mary Staples, Esq. dismissed/withdrawn for Defendant Roberto Baez, Correctional Officer
02/11/2020		Attorney appearance On this date Heidi Dale Handler, Esq. added for Defendant Roberto Baez, Correctional Officer
02/11/2020		Attorney appearance On this date Jennifer Mary Staples, Esq. dismissed/withdrawn for Defendant Vicki Pineda, Paralegal
04/24/2020	42	Defendant Steven Silva As Superintendent Of Souza Baranowski Correctional Center's Motion for summary judgment, MRCP 56 Applies To: Steven Silva As Superintendent Of Souza Baranowski Correctional Center (Defendant); Thomas Lynch, Correctional Officer (Defendant); Roger Dery, Correctional Officer (Defendant); Roberto Baez, Correctional Officer (Defendant); Vicki Pineda, Paralegal (Defendant)
04/24/2020	42.1	Statement of Undisputed Facts in support of p#42: Defendants' Motion for Summary Judgment. Applies To: Steven Silva As Superintendent Of Souza Baranowski Correctional Center (Defendant), Thomas Lynch, Correctional Officer (Defendant), Roger Dery, Correctional Officer (Defendant); Roberto Baez, Correctional Officer (Defendant); Vicki Pineda, Paralegal (Defendant)

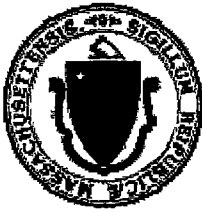
R.A. 12



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

04/24/2020	42 2	Steven Silva As Superintendent Of Souza Baranowski Correctional Center's Memorandum in support of p#42. Defendants' Motion for Summary Judgment	
		Applies To. Steven Silva As Superintendent Of Souza Baranowski Correctional Center (Defendant), Thomas Lynch, Correctional Officer (Defendant), Roger Dery, Correctional Officer (Defendant), Roberto Baez, Correctional Officer (Defendant); Vicki Pineda, Paralegal (Defendant)	
05/09/2020	43	Plaintiff Tony B Gaskins's Motion in Opposition to Defendants' Motion for Summary Judgment	
05/09/2020	43 1	Tony B Gaskins's Memorandum in support of p#43 Plaintiff's Motion in Opposition to Defendants' Motion for Summary Judgment	
07/07/2020		The following form was generated	
		Notice to Appear Sent On. 07/07/2020 16 00 09	
08/06/2020		Event Result. Rule 56 Hearing scheduled on 08/13/2020 10 30 AM Has been Rescheduled For the following reason Transferred to another session Hon. Daniel M Wrenn, Presiding Staff Cheryl Riddle, Assistant Clerk Magistrate	Wrenn
08/13/2020		Matter taken under advisement Rule 56 Hearing scheduled on 08/13/2020 10 30 AM Has been Held - Under advisement Comments FTR 19/Zoom Hon. David Ricciardone, Presiding Staff Gail Dempsey, Assistant Clerk Magistrate	Ricciardone
08/18/2020		Endorsement on Motion for Summary Judgment (#42.0) ALLOWED After hearing. See Memorandum of Decision and order this date Notices mailed 8/19/20 Judge Ricciardone, Hon. David	Ricciardone
08/19/2020		Disp for statistical purposes	
08/19/2020	45	SUMMARY JUDGMENT for Defendant(s), Steven Silva As Superintendent Of Souza Baranowski Correctional Center, Cpt. Shelley Williams, Thomas Lynch, Correctional Officer, Roger Dery, Correctional Officer, Roberto Baez, Correctional Officer, Vicki Pineda, Paralegal, Souza Baranowski Correctional Center against Plaintiff(s), Tony B Gaskins, without statutory costs It is ORDERED and ADJUDGED the complaint is dismissed Entered and Copies mailed 8/19/20	Ricciardone

R.A. 13



COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report

08/19/2020

44

MEMORANDUM & ORDER

Ricciardone

AND DECISION ON DEFENDT'S MOTION FOR SUMMARY JUDGMENT -
For the reasons stated, the Defendant's Motion for Summary Judgment is
ALLOWED (See order) Entered and Copies mailed 8/19/20

Judge: Ricciardone, Hon. David

R.A. 14



CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

THOMAS A. TURCO, III
Secretary

The Commonwealth of Massachusetts
Executive Office of Public Safety & Security
Department of Correction
Legal Division
70 Franklin St., Suite 600
Boston, Massachusetts 02110-1327
Tel: (617-727-3300 Ext. 1124)
www.mass.gov/doc



CAROL A. MICI
Commissioner

JOHN A. O'MALLEY
Chief of Staff

CHRISTOPHER M. FALLON
JENNIFER A. GAFFNEY
MICHAEL G. GRANT
PAUL J. HENDERSON
THOMAS J. PRESTON
Deputy Commissioners

NANCY ANKERS WHITE
General Counsel

April 21, 2020

Civil Clerk's Office
Worcester Superior Court
225 Main Street
Worcester, MA 01608

RE: Gaskins v. Silva, et al.
Worcester Superior Ct., Civil Action No. 1885CV00554

Dear Mister or Madam Clerk:

Enclosed please find the following documents for filing in the above-referenced matter:

1. Defendants' Motion For Summary Judgment, with a Certificate Of Service;
2. Defendants' Statement Of Undisputed Material Facts In Support Of Defendants' Motion For Summary Judgment, with Exhibits and a Certificate Of Service;
3. Defendants' Memorandum of Law In Support Of Defendants' Motion For Summary Judgment, and Certificate Of Service.

Kindly file the above documents in the usual manner. Thank you for your attention to this matter.

Very truly yours,

/s/ Heidi D. Handler
Heidi D. Handler
Regulations Counsel

Enclosures

cc: Tony Gaskins, pro se

R.A. 15

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPT.
DOCKET NO. 1885CV00554

TONY GASKINS,
Plaintiff

v.

STEVEN A. SILVA,
Superintendent of Souza Baranowski
Correctional Center, et al.,
Defendants

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants Steven Silva, Shelley Williams, Thomas Lynch, Roger Dery, Roberto Baez and Vicki Pineda (hereinafter defendants) move for summary judgment pursuant to Rule 56 of the Massachusetts Rules of Civil Procedure. As reason therefor, defendants submit the attached statement of undisputed facts and memorandum of law.

Respectfully Submitted,
DEFENDANTS
By their attorneys,
NANCY ANKERS WHITE
Special Assistant Attorney General

Dated: April 21, 2020

/s/Heidi D. Handler
Heidi D. Handler, BBO# 561474
Department of Correction-Legal Division
70 Franklin Street, Suite 600
Boston, MA 02110-1300
(617) 727-330, ext. 1187
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R.A. 16

CERTIFICATE OF SERVICE

I, Heidi D. Handler, counsel for defendants, hereby certify that on this date, I served a copy of the forgoing document on plaintiff by first class mail, postage prepaid, to his address as follows:

Tony Gaskins
S.B.C.C.
P.O. Box 8000
Shirley, MA 01464

Dated: April 21, 2020

/s/Heidi D. Handler
Heidi D. Handler

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPT.
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TONY GASKINS,
Plaintiff

V.

STEVEN A. SILVA,
Superintendent of Souza Baranowski
Correctional Center, et al.,
Defendants

**DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT
OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendants submit the following statement of undisputed material facts in support of defendants' motion for summary judgment:

1. Tony Gaskins (plaintiff) is an inmate serving a life sentence without the possibility of parole, presently held at the Souza Baranowski Correctional Center in Shirley, MA (SBCC).

Complaint ¶1. Given his underlying sentence, plaintiff may not be housed below medium security. Affidavit of Steven Silva, attached hereto as Defendants' Exhibit 1, ¶18.

2. Defendants are all present or former employees of the Department of Correction (Department) employed at SBCC at relevant times: Steven Silva, Superintendent; Shelley Williams, Captain; Thomas Lynch, Roger Dery, and Roberto Baez, Correction Officers; and Vicki Pineda, paralegal. Steven Silva currently holds the position of Superintendent at the Massachusetts Correctional Institution in Norfolk (MCI-Norfolk), and defendants Shelley Williams and Roger Dery no longer work for the Department. Complaint ¶¶2-7; Exhibit 1,

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¶1; Williams's Response to Plaintiff's Request for Admissions, attached hereto as Exhibit 19, Response Number 6.

3. On December 30, 2016, defendant Silva posted a memorandum in all SBCC housing units, the outer control area, and the visiting room area stating:

Please be advised that effective immediately, staff, visitors and volunteers are **not allowed** to enter the institution while wearing any type of glitter make-up materials. Additionally, any mail to include cards, letters, etc, containing a glitter type substance will not be allowed into the facility and will be considered contraband. Glitter or glitter type products shall not be allowed within the facility unless approved by the Superintendent."

Exhibit 1A.

4. The ban on glitter and glitter products was implemented as part of a Department-wide protocol due to safety and security concerns associated with glitter. Specifically, at the time of the incidents alleged in the Complaint, individuals often attempted to introduce illicit drugs into Department institutions through incoming non-privileged mail, and glitter may be used to conceal drug contraband within the glitter or on paper. Exhibit 1, ¶¶ 4, 5. See also Exhibit 19, Response Number 3.
5. On December 4, 2017 and December 6, 2018, SBCC issued memoranda reaffirming the ban on all glitter products, and the ban on glitter products in any form remains in place for the aforementioned security reasons. Exhibits 1B and 1C.
6. On July 26, 2017, officials at SBCC notified plaintiff that a birthday card sent to him by his daughter had been seized as contraband because it was written with a glitter pen. Complaint, ¶ 8. Disapproved Correspondence/ Publication and Contraband Notice to Inmate, attached hereto as Defendants' Exhibit 2.

7. Plaintiff was allowed to retain the pictures that had been sent in the card, and was given an opportunity to designate how the card should be disposed of under 103 CMR 403, Inmate Property. Complaint, ¶ 8. See also Defendants' Exhibit 2.
8. Plaintiff filed Grievance No. 97843 on July 30, 2017 challenging the determination that the glittered card was contraband. Grievance No. 97843, attached hereto as Defendants' Exhibit 3.
9. Grievance No. 97843 was denied by the Institutional Grievance Coordinator (IGC) on October 19, 2017. Id.
10. Plaintiff appealed the denial of Grievance No. 97843 on October 21, 2017, which appeal was denied by defendant Silva on November 11, 2017 due to the Department-wide ban on glitter. Inmate Grievance Appeal Form, attached hereto as Defendants' Exhibit 4. See also Exhibit 1, ¶7.
11. SBCC did not, and does not, have a blanket ban on brochures from the company Kill Shot King. Rather, all incoming inmate non-privileged mail is processed in accordance with the definitions set forth in 103 CMR 481, Inmate Mail, and if any particular brochure or piece of mail contains sexually explicit material or nudity, it is deemed contraband in accordance with the definitions therein. Thus, plaintiff may have been permitted to receive a brochure from Kill Shot King before or after August 15, 2016. Exhibit 1 ¶ 9. See also 103 CMR 481, Inmate Mail, attached hereto as Exhibit 20.
12. On August 14, 2017, SBCC received an order form mailed to plaintiff from Kill Shot King with pictures that plaintiff admits depicted "scantily clad women." Complaint, ¶ 9.

13. The order form was seized as contraband because Department officials at SBCC deemed the pictures sexually explicit. Complaint, ¶ 9. See also Disapproved Correspondence/ Publication and Contraband Notice to Inmate, attached hereto as Defendants' Exhibit 5.
14. On October 6, 2017, plaintiff filed Grievance No. 98361 challenging the seizing of the order form. Grievance No. 98361, attached hereto as Defendants' Exhibit 6.
15. On November 16, 2017, the IGC denied Grievance No. 98361, stating that the order form was seized because it contained sexually explicit material. Id.
16. Plaintiff appealed the denial of Grievance No. 98361 on November 20, 2017. In his appeal, plaintiff admitted that one picture in the display was deemed sexually explicit, and appealed only the fact that he had been denied an opportunity to view the brochure. Id.
17. On December 6, 2017, defendant Silva denied plaintiff's appeal of Grievance No. 98361 because defendant Williams allowed plaintiff to view the brochure at staff access time. Grievance No. 98361 Appeal Form, attached hereto as Defendants' Exhibit 7. See also Exhibit 1, ¶ 10.
18. Defendant Silva found that the brochure was appropriately deemed contraband due to the nature of at least one photograph in the brochure. Id. Exhibit 1, ¶ 10.
19. Whether or not an item is considered privileged mail is based upon the identity of the sender, not the contents of the mail. See Exhibit 1 ¶ 13; 103 CMR 481.10 Privileged Mail, attached hereto as Exhibit 20.
20. When documents are sent to an inmate from an individual who is not an attorney or officer of the Court, or otherwise identified as a person authorized to send privileged correspondence, pursuant to the definitions in 103 CMR 481, Inmate Mail, the Department processes the entire mailing as incoming non-privileged mail regardless of the nature of any enclosures

because the communication itself is not privileged. Exhibit 1, ¶ 11. See also Exhibit 20, 103 CMR 481.10.

21. 103 CMR 481.20, Prohibition on inmate-to inmate-Correspondence, prohibits inmates from corresponding with inmates in another institution unless they are immediate family members, co-defendants in a legal action representing themselves, or the Superintendent otherwise approves the correspondence based upon exceptional circumstances. The Department considers correspondence through a third party to be a violation of this prohibition. Doing legal work for another inmate is not an exception to this prohibition. Exhibit 1, ¶ 12, See also Exhibit 20, 103 CMR 481.10 Privileged Mail, and SBCC Institutional Mail Procedures attached hereto as Exhibit 13, Section II.

22. Persons may try to hide contraband or messages regarding criminal activity in documents and disguise the documents as privileged mail in order to avoid detection. This is one reason it is important to limit privileged documents only to those specified in 103 CMR 481, Inmate Mail. See Exhibit 1, ¶ 13.

23. 103 CMR 481.05 defines publication as :

Publication. Any book, booklet, pamphlet, magazine, periodical, newsletter, newspaper, or similar document, including stationery and greeting cards, published by any individual, organization, company, or corporation which is distributed or made available through any means or media for a commercial purpose. Publication includes any portion extracted, photocopied, or clipped from such items, provided, however, that an inmate may receive a maximum of five pages per day, except Sundays and postal holidays, of a portion extracted, photocopied, or clipped from such items as an attachment to personal correspondence as long as the material is not prohibited by 103 CMR 481.00. Exhibit 20.

See also SBCC Mail Procedures, Defendants' Exhibit 13.

24. On August 18, 2017, SBCC received a court decision and order concerning another inmate which had been sent to plaintiff from the other inmate's mother, Barbara Babcock. Complaint, ¶ 10.
25. The court decision and order were seized as contraband because inmates cannot correspond with other inmates, or through third parties. See Grievance No. 98363, attached hereto as Defendants' Exhibit 8.
26. On October 6, 2017, plaintiff filed Grievance No. 98363 regarding the seizure of the court decision and order, arguing that the court decision and order were legal documents that should not have been seized. Id. See also Exhibit 10.
27. On November 16, 2017, the IGC denied Grievance No. 98363, citing the ban on inmate-to-inmate correspondence, and noting that "[t]he use of a third party in order to correspond between inmate to inmate is not allowed." Id.
28. On November 20, 2017, plaintiff appealed the denial of Grievance No. 98363, and defendant Silva denied the appeal on December 4, 2017. See Grievance 98363 Appeal Form, attached hereto as Defendants' Exhibit 9.
29. Defendant Silva denied the appeal because he considered the correspondence inmate-to-inmate correspondence in violation of 103 CMR 481, Inmate Mail, and correspondence through a third party is considered to be a violation of this prohibition. Exhibit 1 ¶ 12.
30. On October 7, 2017, plaintiff received a second mailing from Barbara Babcock which enclosed a trial transcript. All but five pages of the transcript was deemed contraband because it was not considered legal mail. See Grievance No. 98405, attached hereto as Defendants' Exhibit 10.

31. Plaintiff filed Grievance No. 98405 challenging the determination that the transcript was contraband. The phrase in this Grievance, “as well as the legal decision in a federal case,” are a reference to the documents that are the subject matter of Grievance 98363. Exhibits 8, 10.
32. On October 18, 2017 the IGC denied Grievance No. 98405. In his denial, the IGC noted: “Grievance is denied Incoming mail containing legal documents, but not mailed by authorized person listed in 103 CMR 481.10 is not considered privileged mail because the Department determines whether or not an item is considered privileged mail based upon the identity of the sender, not the contents of the mail, and all contents are processed as non-privileged mail. The contents of the mail were photocopies attached to personal correspondence forwarded by a person not specified in section 10, thus considering the material a “publication” where inmates are allowed to receive a maximum of five (5) pages. Id. See also Exhibit 1, ¶13.
33. Plaintiff appealed the denial of Grievance No. 98405, and defendant Silva denied the appeal on November 7, 2017 because the material included in the mailing fell within the definition of “publication.” See Grievance No. 98405 Appeal Form, attached hereto as Exhibit 11. See also Exhibit 1, ¶ 13, 14, 16.
34. On October 7, 2017 SBCC received an appellate brief mailed to plaintiff by Jose Delacruz. Five pages of the brief were provided to plaintiff, but the remainder was deemed contraband pursuant to 103 CMR 481, Inmate Mail, and the SBCC mail procedures. Complaint, ¶¶ 11, 12; See also Disapproved Correspondence/ Publication and Contraband Notice to Inmate, attached hereto as Defendants’ Exhibit 12, See also Exhibit 20 103 CMR 481.10, Privileged Mail; Defendants’ Exhibit 13; Defendants Exhibit 1 ¶¶ 13, 15, 16.

35. Plaintiff filed an informal complaint regarding the determination that the remainder of the brief was contraband. See Informal Complaint Form, attached hereto as Defendants Exhibit 14.
36. Plaintiff filed Grievance No. 98533 on October 19, 2017, with regard to the seizure of all but five pages of the appellate brief sent to him by Jose Delacruz, arguing that the brief was legal mail. See Grievance No. 98533, attached hereto as Defendants Exhibit 15.
37. On November 16, 2017, the IGC denied Grievance No. 98533, stating: "Inmates may receive a maximum of five pages per day, except Sundays and postal holidays, of a portion extracted, photocopied, or clipped from such items as an attachment to personal correspondence as long as the material is not otherwise prohibited by the 103 CMR 481, Inmate Mail [policy]." Id.
38. On November 20, 2017 plaintiff appealed the denial of Grievance No. 98533, and defendant Silva denied the appeal on December 4, 2017 because the enclosure in the personal correspondence was considered a publication. See Grievance No 96533 Appeal Form, attached hereto as Defendants' Exhibit 16. See also Exhibit 1 ¶ 14.
39. It is important to review all documents that are not privileged, because even if the document appears acceptable at first glance, individuals could alter typed data to look like legal work to avoid detection. For example, civilians may mail in printed publications which facilitate, encourage, or instruct in, criminal activity, but disguise the documents as legal materials. Department staff must review all attachments to non-privileged correspondence to ensure that no material enters the institution which would interfere with safety, security, order and discipline. If there were no limitation on copies of printed materials the burden associated

- with review would soon become overwhelming. Thus, the five-page limit is necessary to limit volume so that staff may appropriately scan the content of attachments. Exhibit 1¶16.
40. On February 12, 2018 SBCC began photocopying incoming non-privileged inmate mail in an effort to reduce drug related contraband from entering the facility. Exhibit 17.
41. On August 10, 2018 the Department conducted an annual review of 103 CMR 481, Inmate Mail, including a Standard Operating Procedure of photocopying all incoming non-privileged inmate mail at medium and maximum-security facilities. This annual review was signed by Commissioner Turco on August 16, 2018. See Annual Review and Standard Operating Procedure attached hereto as Defendants' Exhibit 18.
42. The SOP was implemented due to safety and security concerns associated with the introduction of illegal drug contraband entering Department institutions through incoming inmate non-privileged mail. This SOP remains in effect. Affidavit of Steven Silva, attached hereto as Defendants' Exhibit 1¶ 17.

Respectfully Submitted,
DEFENDANTS
By their attorneys,
NANCY ANKERS WHITE
Special Assistant Attorney General

Dated: April 21, 2020

/s/ Heidi D. Handler
Heidi D. Handler, BBO# 561474
Department of Correction-Legal Division
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Boston, MA 02110-1300
(617) 727-330, ext. 1187
Heidi.Handler@doc.state.ma.us

CERTIFICATE OF SERVICE

I, Heidi D. Handler, counsel for defendants, hereby certify that on this date, I served a copy of the forgoing document on plaintiff by first class mail, postage prepaid, to his address as follows:

Tony Gaskins
S.B.C.C.
P.O. Box 8000
Shirley, MA 01464

Dated: April 21, 2020

/s/Heidi D. Handler

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPT.
DOCKET NO. 1885CV00554

TONY GASKINS,
Plaintiff

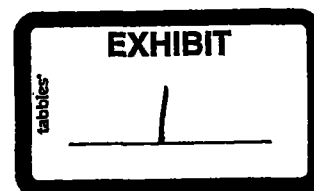
V.

STEVEN A. SILVA,
Superintendent of Souza Baranowski
Correctional Center, et al.,
Defendants

AFFIDAVIT OF STEVEN SILVA

I, Steven Silva, hereby depose and state the following:

1. I am currently employed by the Department of Correction (Department) and hold the position of Superintendent of the Massachusetts Correctional Institution in Norfolk, Massachusetts (MCI-Norfolk). At the time of the incidents alleged in the underlying complaint, I held the position of Superintendent at the Souza-Baranowski Correctional Center (SBCC). I have been employed by the Department for approximately thirty-four (34) years. During this time I have held many other management positions, to include Deputy Superintendent at SBCC and Director of the Central Inmate Transportation Unit, as well as uniformed positions to include Correction Officer, Sergeant, Lieutenant and Captain.
2. The information contained in this affidavit is based upon my experience in the field of corrections, my personal knowledge and/or upon my review of official records that are kept during the normal course of business.



3. The introduction of illicit narcotics and other drugs into the Department's prisons has grown as a substantial security problem, posing severe risks to the health and safety of staff, vendors, inmates, and the public at large.
4. Before, at the time of, and subsequent to the incidents alleged in the Complaint, individuals often attempted to use incoming non-privileged inmate mail to introduce illicit substances, including drugs, into Department institutions.
5. Glitter and glitter products pose safety and security concerns. Specifically, glitter conceals other substances that may be hidden within the texture of the product. In connection with items that are mailed to institutions, glitter may be used to cover or conceal alterations that may be made to paper beneath glitter, such as soaking or otherwise adulterating paper with illicit substances and/ or drugs. These are some of the reasons the Department placed a ban on glitter products in any form.
6. On December 30, 2016 I issued a memorandum regarding glitter as part of the Department-wide policy prohibiting glitter inside Department facilities. Reminder memoranda were issued yearly thereafter. These memoranda are attached hereto as Exhibits 1A, 1B, and 1C.
7. During the course of my regular duties I reviewed plaintiff's appeal of Grievance No. 97843, and denied the appeal because the card that was the subject matter of Grievance No. 97842 was properly deemed contraband in accordance with the Department policy as set forth in the Memorandum I issued on December 30, 2016.
8. In the course of my regular duties I reviewed the plaintiff's appeal of the denial of the Kill Shot King Brochure sent to plaintiff and associated with the appeal of Grievance

No. 98361. In his appeal, plaintiff admitted that one picture in the display was sexually explicit, and appealed only the fact that he had been denied an opportunity to view the brochure. I denied plaintiff's appeal of Grievance No. 98361 because defendant Williams allowed plaintiff to view the brochure at staff access time.

9. SBCC did not, and does not, have a blanket ban on Kill Shot King Brochures. Rather, all incoming inmate non-privileged mail is processed in accordance with the definitions set forth in 103 CMR 481, Inmate Mail, and if any particular brochure or piece of mail contains sexually explicit material or nudity it is deemed contraband in accordance with the definitions therein. Specifically, Correction Officers working in the mailroom flag items as containing sexually explicit and nude material, and the Deputy Superintendent of Operations makes the final determination as to whether something is, in fact, contraband due to its sexual explicit or nude content. Thus, plaintiff may have been permitted to receive a brochure from Kill Shot King before or after August 15, 2016.
10. One picture in the brochure which is the subject matter of Grievance No. 98361 contained sexually explicit material. For this reason, and none other, the brochure was properly deemed contraband.
11. When documents are sent to an inmate from an individual who is not an attorney or officer of the Court, or otherwise identified as a person authorized to send privileged correspondence pursuant to the definitions in 103 CMR 481, Inmate Mail, the Department processes the entire mailing as incoming non-privileged mail regardless of the nature of any enclosures because the communication itself is not privileged.

12. 103 CMR 481.20, Prohibition on inmate to inmate Correspondence, prohibits inmates to correspond with inmates in another institution only if they are immediate family members, co-defendants in a legal action representing themselves, or the Superintendent otherwise approves the correspondence based upon exceptional circumstances. The Department considers correspondence through a third party to be in-violation of this prohibition. Doing legal work for another inmate is not an exception to this prohibition. I denied plaintiff's appeal of Grievance No. 98363 because I considered it inmate-to-inmate correspondence.
13. 103 CMR 481.10 Privileged Mail, does not define privileged mail based upon the nature of the item being sent. Specifically, whether or not an item is considered privileged mail is based upon the identity of the sender, not the contents of the mail, and the regulation provides a list of authorized senders. This is necessary because privileged mail is not opened and searched in the same manner as incoming inmate non-privileged mail. Experience has shown that various persons try to hide contraband or messages regarding criminal activity in documents and disguise the documents as privileged mail in order to avoid detection. This is one reason it is important to limit privileged documents only to those whose authenticity can be verified by the sender.
14. I denied plaintiff's appeal of Grievance No. 98405, which involved a trial transcript enclosed within correspondence, because the sender of the documents was a civilian friend, not an authorized sender of privileged mail. If it had been determined that the transcript was sent in order to allow plaintiff to assist another inmate with legal work,

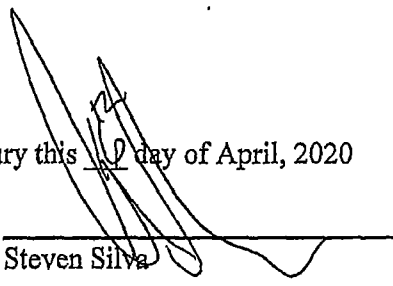
it would also have been appropriate to contraband the entire enclosure as inmate-to-inmate correspondence.

15. I reviewed the appeal of Grievance No. 98533 involving fifteen-page appellate brief sent to plaintiff by a civilian. I denied plaintiff's appeal of this Grievance because the document was not considered privileged mail for the same reason that the documents related to Grievance No. 98405 were not considered privileged mail. Specifically, the sender was a civilian friend and not an authorized sender of privileged mail. As with Grievance No. 98405, if it had been determined that the brief was sent in order to allow plaintiff to assist another inmate with legal work, it would also have been appropriate to contraband the entire enclosure as inmate-to-inmate correspondence.
16. It is important to review all documents that are not privileged because even if the document appears acceptable at first glance, individuals may alter-typed data to look like legal work to avoid detection. For example, civilians may mail in printed publications which facilitate, encourage, or instruct in, criminal activity, but disguise the documents as legal materials. Department staff must review all attachments to non-privileged correspondence to ensure that no material enters the institution which would interfere with safety, security, order and discipline. If there were no limitation on copies of printed materials the burden associated with review would soon become overwhelming. Thus, the five-page limit is necessary to limit volume so that staff may appropriately scan the content of attachments.
17. Individuals attempting to use the mail to introduce illicit substances into Department institutions are constantly evolving techniques of obscuring illicit substances in or on

paper mail. This is one of the reasons why the Department implemented a Standard Operating Procedure in 2018 to photocopy all incoming inmate non-privileged mail at medium and maximum security institutions.

18. Because plaintiff is serving a sentence of life without the possibility of parole, the Department's classification process will not allow him to be housed below medium security.

Signed under the pains and penalties of perjury this 10 day of April, 2020



Steven Silva

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPT.
DOCKET NO. 1885CV00554

TONY GASKINS,
Plaintiff

V.

STEVEN A. SILVA,
Superintendent of Souza Baranowski
Correctional Center, et al.,
Defendants

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendants Steven Silva, Shelley Williams, Thomas Lynch, Roger Dery, Roberto Baez and Vicki Pineda (hereinafter defendants) submit this memorandum of law in support of their motion for summary judgment.

PROCEDURAL HISTORY

Plaintiff Tony Gaskins (hereinafter plaintiff) filed the Complaint in this action on April 10, 2018. Docket No. 1. Following service, attorney Jennifer Staples entered her appearance for defendants and filed a motion to enlarge time for filing an answer or responsive pleading. Docket No. 18. Defendants filed a motion to dismiss (MTD), along with a memorandum of law in support of the MTD on August 1, 2018. Docket No. 19. On October 1, 2018, plaintiff filed an opposition to defendants' MTD. Docket No. 27.

The Court held a hearing on defendants' MTD on November 20, 2018 (Docket Nos, 23, 24, 27). On April 12, 2019, the Court issued a memorandum and order on defendants' MTD stating:

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For the aforementioned reasons, it is ORDERED that the Defendants Motion to dismiss is DENIED in part, and ALLOWED in part. The Defendants motion to dismiss is DENIED with respect to the Plaintiffs challenge to the constitutionality of the glitter ban policy; the claims pursuant to the First and Fourteenth Amendments of the United States Constitution against the defendants in their individual capacities and articles 12 and 16 of the Massachusetts Declaration of Rights; and the Plaintiff's request for declaratory relief under G.L. c. 231A §2. The Defendants Motion to Dismiss is ALLOWED as to a violation of Matthews v. Marshall Suff. Superior Ct No. 1998-SUCV-6041; the constitutionality of regulations relating to sexually explicit material; and § 1983 claims against the defendants in their official capacities.
Docket No. 28

Following discovery, on November 18, 2019 plaintiff filed a motion for judgment on the pleadings. Docket No. 37.1. A hearing on plaintiff's motion for judgment on the pleadings was held on January 30, 2020. On the same date, defendants filed a motion for leave to withdraw and substitute undersigned counsel and an opposition to plaintiff's motion for judgment on the pleadings. The Court denied plaintiff's motion for judgment on the pleadings, and directed the parties to submit motions for summary judgment. Docket Nos. 40, 41.

SUMMARY OF UNDISPUTED MATERIAL FACTS

Defendants' statement of undisputed material facts in support of their motion for summary judgment (SMF) is attached hereto and includes specific citations. The following summary is provided for ease of reference:

Plaintiff is an inmate housed at the Souza-Baranowski Correctional Center in Shirley, MA (SBCC). Defendants are Superintendent Steven Silva, Captain Shelley Williams, Correction Officers Thomas Lynch, Roger Dery, and Roberto Baez, and paralegal Vicki Pineda. All defendants were assigned to SBCC at the time of the incidents in question. SMF ¶¶ 1, 2.

This action involves defendants' seizure of documents contained in five (5) mailings to plaintiff, which were deemed contraband pursuant to 103 CMR 481, Inmate Mail. Specifically, a birthday card containing glitter; a photograph containing nudity and sexually explicit material; documents sent through a third party which were deemed inmate-to-inmate correspondence; and portions of enclosures containing legal materials from two separate mailings which were considered publications and restricted in quantity because they were not privileged correspondence. SMF ¶¶ 6, 12, 13, 24, 30, and 34.

Plaintiff brings this action pursuant to M.G.L. c. 231A, § 2, M.G.L. c. 30A, §§ 1-8, and 42 U.S.C. § 1983 alleging that defendants violated his rights under the First and Fourteenth Amendments to the U.S. Constitution, and Articles 12 and 16 of the Massachusetts Declaration of Rights. Plaintiff seeks declaratory, injunctive, and monetary relief. Complaint, Causes of Action and Prayers for Relief pp. 4-6.

ARGUMENT

I. STANDARD OF REVIEW

"Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Correia v. Fagan, 452 Mass. 120, 129 (2008). "The Court views 'the facts, together with all reasonable inferences to be drawn from them, in the light most favorable to the nonmoving party . . .'" Cesso v. Todd, 92 Mass. App. Ct. 131, 135 (2017), quoting Pugsley v. Police Dept. of Boston, 472 Mass. 367, 370371 (2015). "[A] party moving for summary judgment in a case in which the opposing party will have the burden of proof at trial is entitled to summary judgment if he demonstrates, by reference to material described in Mass. R. Civ. P. 56(c), . . . unmet by countervailing materials, that the party opposing the motion

has no reasonable expectation of proving an essential element of that party's case." Alicea v. Commonwealth, 466 Mass. 228, 234 (2013), quoting Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991).

A plaintiff's claims for declaratory and monetary damages are not appropriate in a case where "it appears to a certainty [that plaintiff is] entitled to no relief under any state of facts which could be proved in support of [his] claim." Harvard Law School Coalition for Civil Rights v. President and Fellows of Harvard College, 413 Mass. 66, 68 (1992).

II. PLAINTIFF'S MAIL ITEMS WERE PROPERLY DEEMED CONTRABAND PURSUANT TO 103 CMR 481, INMATE MAIL.

Massachusetts courts have opined that "[t]he operation of a correctional institution is at best an extraordinarily difficult undertaking and, therefore, we have recognized that prison administrators must have broad discretion in the administration of prison affairs." Kenney v. Commissioner of Correction, 393 Mass. 28, 35 (1984), quoting Real v. Superintendent, Mass. Correctional Inst., Walpole, 390 Mass. 399 (1983). Although "prison inmates retain certain constitutional rights," those rights are necessarily limited by "[t]he fact of confinement as well as the legitimate goals and policies of the penal institution." Cacicio v. Secretary of Pub. Safety, 422 Mass. 764, 770 n.10, 665 N.E.2d 85 (1996), quoting from Bell v. Wolfish, 441 U.S. 520, 545-547, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979).

Thus, a policy authorizing censorship of inmate mail does not run afoul of the First Amendment so long as it is "reasonably related to legitimate penological interests." Commonwealth v. Jessup, 471 Mass. 121, (2015), quoting Turner v. Safley, 482 U.S. 78, 89 (1987). The Massachusetts Courts have adopted Turner's four-factor inquiry to determine whether a prison regulation is reasonably related to a legitimate

penological interest: “(1) Is there a valid, rational connection between the regulation and the governmental interest put forward to justify it, and is the governmental interest legitimate and neutral; (2) do alternative means of exercising the challenged right remain open to inmates; (3) will accommodating the challenged right have a significant ‘ripple effect’ on guards, other inmates, and the allocation of prison resources in general; and (4) does an alternative to the regulation exist which would fully accommodate the inmates’ rights at de minimis cost to valid penological interests?” Cacicio v. Secretary of Pub. Safety, supra at 770, citing Turner, supra at 89–91.

The glittered birthday card, order form, court decision and order, and portions of a trial transcript and appellate brief were deemed contraband for legitimate penological reasons, and the contraband determination and subsequent seizure of the items was conducted pursuant to, and in compliance with, 103 CMR 481, Inmate Mail. The Appeals Court has specifically found that 103 CMR 481, Inmate Mail, meets all of the Turner requirements. Gaskins v. Dennehy, 84 Mass.App.Ct., 1111 (2013) As such, the seizing of all of plaintiff’s mail items pursuant to 103 CMR 481, Inmate Mail, did not violate plaintiff’s rights.

A. Defendants Seizure Of The Birthday Card Containing Glitter Was Properly Made Pursuant to 103 CMR 481.13, And Plaintiff’s Claims Regarding The Ban On Glitter Are Moot In Light Of the Department’s Policy Photocopying All Incoming Non-Privileged Inmate Mail.

The seizure of the glittered birthday card was made pursuant to 103 CMR 481.13 (2) (h) which provides:

481.13: Reading/Censoring/Disapproval of Incoming, Non-privileged Correspondence/Publications

(1) Incoming Correspondence. It is the policy of the Massachusetts Department of Correction not to read, censor, or disapprove incoming

correspondence, except where necessary to protect legitimate governmental interests.

(2) The Superintendent may authorize the reading, censoring or disapproval of incoming non-privileged correspondence only to prevent interference with institutional goals of security, order, discipline, or if the correspondence might facilitate, encourage, or instruct in, criminal activity. Disapproval of incoming, non-privileged correspondence shall not be based upon an employee's personal views about the correspondence. The Deputy Superintendent or his or her designee may disapprove receipt by an inmate of non-privileged correspondence, the contents of which fall as a whole or in significant part into any one of the following categories:

...

(h) The correspondence facilitates the introduction of contraband drugs, *etc.*

Thirty years ago, the Supreme Court took "judicial notice that the unauthorized use of narcotics is a problem that plagues virtually every penal and detention center in the country." Block v. Rutherford, 468 U.S. 576, 588-89 (1984). In no uncertain terms, the Court has exhorted prison officials to "take all necessary steps" to address the problem of drugs and other contraband entering correctional facilities:

Prisons, by definition, are places of involuntary confinement of persons who have a demonstrated proclivity for antisocial criminal, and often violent, conduct. Inmates have necessarily shown a lapse in ability to control and conform their behavior to the legitimate standards of society by the normal impulses of self-restraint; they have shown an inability to regulate their conduct in a way that reflects either a respect for law or an appreciation of the rights of others. ...

Within this volatile "community," prison administrators are to take all necessary steps to ensure the safety of not only the prison staffs and administrative personnel, but also visitors. They are under an obligation to take reasonable measures to guarantee the safety of the inmates themselves. *They must be ever alert to attempts to introduce drugs and other contraband into the premises which, we can judicially notice, is one of the most perplexing problems of prisons today*; they must prevent, so far as possible, the flow of illicit weapons into the prison; they must be vigilant to detect escape plots, in which drugs or weapons may be involved, before the schemes materialize. In addition to these monumental tasks, it is incumbent upon these officials at the same time to maintain as sanitary an environment for the inmates as feasible, given the difficulties of the circumstances.

Hudson v. Palmer, 468 U.S. 517, 526-527 (1994) (emphasis added).

Before, at the time of, and subsequent to the incidents alleged in the Complaint, individuals often attempted to use incoming inmate mail to introduce illicit substances, including drugs, into Department institutions. SMF ¶ 4. Glitter and glitter products pose safety and security concerns because glitter conceals other substances that may be hidden within the texture of the product. In connection with items that are mailed to institutions, glitter may be also be used to cover or conceal alterations made to paper beneath glitter, such as soaking or otherwise adulterating paper with illicit substances and/or drugs. *Id.* Thus, on December 30, 2016, the Department implemented a ban on glitter in any form in all its institutions, and Superintendent Silva posted notice of the ban in inmate housing units, visiting rooms, stating:

Please be advised that effective immediately, staff, visitors and volunteers are **not allowed** to enter the institution while wearing any type of glitter make-up materials. Additionally, any mail to include cards, letters, etc, containing a glitter type substance will not be allowed in to the facility and will be considered contraband. Glitter or glitter type products shall not be allowed within the facility unless approved by the Superintendent.”

SMF 3. See also Exhibit 1A.

In light of the fact that glitter is used to conceal drug contraband, banning glitter is clearly reasonably related to legitimate penological interests. Moreover, plaintiff and his daughter would have been on notice of the glitter ban when the December 30, 2016 memoranda was posted in housing units and visiting rooms, and they had an alternative means of exercising their rights to correspond as she could still send cards - the cards would just have to be glitter free. Nor was the glitter ban arbitrarily applied to plaintiff; the memoranda explicitly states that the glitter ban applies to all staff, volunteers, and visitors as well as inmates. See Turner, supra at 89–90 (prison regulation withstands constitutional scrutiny unless “the logical connection between the regulation and the

asserted goal is so remote as to render the policy arbitrary or irrational”). Allowing plaintiff to receive cards containing glitter would have a ripple effect of endangering the safety and security of all inmates, staff, volunteers, and the general public because they would be more likely to encounter drugs or inmates under the influence of drugs. Moreover, plaintiff can still send and receive glitter-free mail. As such, the Department’s ban on glitter does not violate plaintiff’s First Amendment rights.

Lastly, the Department now photocopies all incoming inmate non-privileged mail at medium and maximum security institutions, not just mail containing glitter, in an effort to further reduce drug contraband. SMF 40, 41, 42. As an inmate serving a life sentence without parole, plaintiff will never be housed below medium security. Given this fact, plaintiff’s claims in connection with glitter are moot. Courts need decide only actual controversies, not moot cases. Commissioner of Correction v. McCabe, 410 Mass. 847, 850-851 (1991). Mootness is “the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).” United States Parole Comm’n v. Geraghty, 445 U.S. 388, 397 (1980). “Litigation is considered moot when the party who claimed to be aggrieved ceases to have a personal stake in its outcome.” Bornstein v. Bd. of Registration in Optometry, 403 Mass. 621, 627 (1998), quoting Blake v. Massachusetts Parole Board, 369 Mass. 701, 703 (1976). In addition, the Supreme Court has stated that a case is moot if, due to a change in circumstances, no relief is available. Church of Scientology v. United States, 506 U.S. 9, 12 (1992); Pidge v. Superintendent, MCI-Cedar Junction, 32 Mass.App.Ct. 14, 19-20 (1992)(conditions of confinement in specialized unit claim mooted by return to general population).. The requirement of an

actual, and not moot, controversy is particularly applicable to actions seeking declaratory relief. Penal Institutions Commissioner for Suffolk County v. Commissioner of Correction, 382 Mass. 527, 530-531 (1981); see also, Even Corporation v. License Commission for the City of Worcester, 372 Mass. 869 (1977). In addition, where declaratory relief is sought, the plaintiff must show that there is a substantial controversy over present rights of "sufficient immediacy and reality" requiring adjudication. Boston Teachers Union, Local 66 v. Edgar, 787 F.2d 12, 15-16 (1st Cir. 1986) (quoting Preiser v. Newkirk, 422 U.S. 395, 402, 95 S.Ct. 2330, 2334-35, 45 L.Ed.2d 272 (1975)). Once the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome, the case for declaratory relief is moot. Id. Given that the current policy prevents any original piece of incoming inmate non-privileged mail from entering any facility where plaintiff may be housed, plaintiff's claims regarding the glitter ban are moot.

B. The Order Form Was Properly Seized As Contraband Pursuant to 103 CMR 481(2)(g).

The seizure of the Kill Shot King order form was made pursuant to 103 CMR

481.13 (2) (g) which provides:

481.13: Reading/Censoring/Disapproval of Incoming, Non-privileged Correspondence/Publications

(1) Incoming Correspondence. It is the policy of the Massachusetts Department of Correction not to read, censor, or disapprove incoming correspondence, except where necessary to protect legitimate governmental interests.

(2) The Superintendent may authorize the reading, censoring or disapproval of incoming non-privileged correspondence only to prevent interference with institutional goals of security, order, discipline, or if the correspondence might facilitate, encourage, or instruct in, criminal activity. Disapproval of incoming, non-privileged correspondence shall not be based upon an employee's personal views about the correspondence. The Deputy Superintendent or his or her designee may disapprove receipt by an inmate of non-privileged correspondence, the contents of which fall as a whole or in significant part into any one of the following categories:

...
(g) The correspondence contains sexually explicit pictorial material or material which features nudity which, by its nature or content, poses a threat to the security, good order, or discipline of the institution.

The inmate mail regulation defines the term “nudity” as “[a] pictorial depiction where genitalia, buttocks or female breasts are exposed. Publications containing nudity illustrative of medical, educational, or anthropological content may be excluded from this definition.” 103 CMR 481.05, Definitions. The term “sexually explicit” is defined as “[a] pictorial depiction of actual or simulated sexual acts including sexual intercourse, anal or oral sex, or masturbation or material which promotes itself based upon such depictions on a routine or regular basis or in individual one-time issues.” Id.

Courts have uniformly held that inmates do not have a First Amendment right of access to pornography. See e.g., Mairo v. Arpaio, 188 F.3d 1054 (9th Cir. 1999) cert. denied 529 U.S. 1018, 120 S.Ct. 1419 (2000) (rejecting First Amendment challenge to jail policy prohibiting “sexually explicit materials” including “pictorials that show frontal nudity”); Amatel v. Reno, 156 F.3d 192 (D.C. Cir. 1998) cert. denied, 119 S.Ct. 2365 (1999) (upholding the Federal Bureau of Prisons regulations barring material that is “sexually explicit or features nudity”). In Moses v. Dennehy, 523 F.Supp. 2d 57 (D. Mass. 2007), aff’d, Josselyn v. Dennehy, 333 Fed.Appx. 581 (1st Cir. 2009), the United States District Court rejected, and the First Circuit affirmed, a challenge to the ban on sexually explicit materials and/or images of nudity:

This Court is thus satisfied that a ban on nude, semi-nude, or sexually explicit material is not wholly irrational or arbitrary on its face with respect to prison safety. The Court therefore holds, as a matter of law, that there is a rational relationship between the banning of sexually explicit material and the safety and rehabilitation efforts of the Department. Accordingly, 103 CMR 481 is a constitutionally valid prison regulation.
Moses, 523 F.Supp.2d at 63.

In Gaskins v. Clarke, 2008 WL 160826, (D.Mass.2008) (Saris, J.) cert. denied, 129 S.Ct. 949 (2009) , the Federal District Court rejected, and the First Circuit affirmed, a First Amendment challenge by plaintiff to the prohibition of movies rated R and NC-17.

The Department does not have a blanket ban on Kill Shot King brochures, but reviews each brochure in accordance with the definitions set forth in the inmate mail regulation. Plaintiff admits that the subjects of the pictures were scantily clad. The Kill Shot King order form in this case was seized because one picture in the form contained nudity and sexually explicit material. SMF ¶¶ 11-18. It is defendants' duty as correctional professionals to apply the standards set forth in the regulation to what they see before them as the regulation specifies that "the deputy superintendent or his designee" may disapprove non-privileged correspondence that "in whole or in significant part" if it includes sexually explicit material or material which features nudity. See 103 CMR 481.13. Accordingly, defendants properly exercised their professional judgment when they deemed this particular brochure contraband because they determined that one picture contained sexually explicit material and nudity. Accordingly, seizure of the brochure was appropriate and not in violation of plaintiff's constitutional rights. Id.¹

C. The Seizures Of All But Five Pages Of The Trial Transcript Sent By Barbara Babcock And All But Five Pages Of The Appellate Brief Sent By Jose Delacruz Were In Compliance With 103 CMR 481, Inmate Mail.

103 CMR 481 defines "privileged mail" as inmate mail sent to or from:

- (a) Any officer of a court of the United States, of the Commonwealth of Massachusetts, or of any court of any state of the United States (e.g., judge, government attorney, court clerk, parole board members, probation or parole officers);

¹ Defendants note that in his appeal of Grievance No. 98361, plaintiff appears to only allege that he was not permitted to view the brochure in conjunction with his appeal. The appeal was denied in connection with this allegation because defendant Williams permitted plaintiff to view the brochure at staff access. SMF ¶17-18.

- (b) The President or Vice President of the United States or the Governor of the Commonwealth of Massachusetts;
- (c) Any member of the Congress of the United States or any member (e.g., legislator) of the General Court of the Commonwealth of Massachusetts;
- (d) The Attorney General of the United States or the Attorney General of the Commonwealth of Massachusetts;
- (e) The Director or any agent of the Federal Bureau of Investigation; and
- (f) The Superintendent of the state correctional institution in which the inmate is confined, an Assistant Deputy Commissioner or Deputy Commissioner of Correction, or the Commissioner of the Massachusetts Department of Correction.

103 CMR 481.10, Privileged Mail.

All other mail is considered non-privileged correspondence, which is subject to 103 CMR 481.13, Reading/Censoring/Disapproval of Incoming Non-privileged Correspondence/Publications. SMF ¶¶ 19, 20. The inmate mail regulation limits the number of pages from an outside source which may be enclosed along with incoming non-privileged inmate mail. Specifically 103 CMR 481.05, Definitions, provides:

Publication. Any book, booklet, pamphlet, magazine, periodical, newsletter, newspaper, or similar document, including stationery and greeting cards, published by any individual, organization, company, or corporation which is distributed or made available through any means or media for a commercial purpose.” The definition further notes that “Publication includes any portion extracted, photocopied, or clipped from such items, *provided, however, that an inmate may receive a maximum of five pages per day, except Sundays and postal holidays, of a portion extracted, photocopied, or clipped from such items as an attachment to personal correspondence as long as the material is not prohibited by 103 CMR 481.00.*” (emphasis added).

103 CMR 481, Inmate Mail.

SBCC’s internal Inmate Mail Operating Procedures provide SBCC mail staff guidance on how to implement 103 CMR 481, Inmate Mail. Specifically the SBCC procedure describes how to process enclosures in personal correspondence, stating:

Inmates may receive a maximum of five pages per day, except Sundays and Postal holidays, of a portion extracted, photocopied, or clipped from such items as an attachment to personal correspondence as long as the material is not otherwise prohibited by the 103 CMR 481, Inmate Mail. (i.e. if an inmate receives a piece of mail with fifteen(15) pages of internet

printing along with a personal letter, 10 of the internet pages shall be handled according to contraband mail guidelines. However, there is no limit on the amount of incoming mail an inmate receives. This shall not apply to Privileged mail. (emphasis added)

Defendants' Exhibit 13.

On October 7, 2017, in two separate mailings, plaintiff received an appellate brief from Jose Delacruz, and a trial transcript from Barbara Babcock. With regard to each, plaintiff was provided with five pages of the enclosed documents but the remaining pages were seized by defendants as contraband pursuant to the inmate mail regulation and SBCC's internal inmate mail procedures. SMF ¶ 30, 34.

In his grievances and appeals, plaintiff argues that the appellate brief sent to him by Jose Delacruz and the trial transcript sent to him by Barbara Babcock are legal mail, and thus fall within the definition of "privileged mail," and so are not subject to any restrictions, including the five-page limit per day on personal correspondence. The assertion is false. SMF ¶¶ 30, 31, 34, 35. Pursuant to 103 CMR 481, Inmate Mail, the Department determines what is "privileged mail" based upon the person or entity sending the mail to the inmate, not based upon the content of the mailing. SMF ¶ 32. This interpretation of the regulation is rational because the individuals identified in the regulation are either officers of the Court or governmental officials and by virtue of their position their communications with an inmate are considered confidential, and inherently trustworthy. Civilians who do not hold these positions have no right to communicate with inmates in a confidential matter, and any document sent by them, whether legal or otherwise, is subject to review. See Ten Local Citizen Grp. v. New England Wind, LLC, 457 Mass. 222, 228 (2010) (courts accord "considerable deference" to an agency's

interpretation of its own regulations, and a party challenging that interpretation faces a “formidable burden” to show that the agency’s interpretation is not rational).

It is important to review all documents that are not privileged because even if the document appears acceptable at first glance, individuals could alter typed data to look like legal work to avoid detection. For example, civilians may mail in printed publications which facilitate, encourage, or instruct in, criminal activity, but disguise the documents as legal materials. Department staff must review all attachments to non-privileged correspondence to ensure that no material enters the institution which would interfere with safety, security, order and discipline. If there were no limitation on copies of printed materials the burden associated with review would soon become overwhelming. Thus, the five-page limit is necessary to limit volume so that staff may appropriately scan the content of attachments. SMF ¶ 38.

In this case, defendants did not bar plaintiff from receiving either the trial transcript or the appellate brief, but merely stated that plaintiff must have the items sent in accordance with established procedure of five pages per day; defendants’ response to plaintiff’s informal Complaint regarding the Delacruz mailing stated “legal documents can be mailed in but you must adhere to the SBCC procedures w/ 5 pages mailed in per envelope,” and the IGC stated in response to Grievance No. 98405 “Incoming mail containing legal documents, but not mailed by an authorized person listed in 103 CMR 481.10 is not considered legal mail. . . . considering the material a “publication” where inmates are allowed to receive a maximum of five (5) pages per day.”² SMF ¶¶ 32, 37.

² The transcript and brief could have been properly barred in their entirety had defendants determined that they constituted inmate-to-inmate correspondence. See Section D *infra*. Thus, plaintiff received more than he would have been entitled to if defendants had researched the documents and determined that they constituted inmate-to-inmate correspondence.

When applying the Turner standard to the facts at hand, it is clear that defendants' actions did not infringe upon plaintiff's constitutional rights. First, the limit on publications sent by civilians bears a rational relationship to the valid penological interest of maintaining safety, order and discipline. Second, the documents at issue were not barred in their entirety, and plaintiff had an alternative means available to him to obtain the information in separate mailings, or potentially requesting the information directly from a Court. Third, allowing the material in without review would have a ripple effect of placing other inmates, staff and the general public at risk of harm. And fourth, the five-page per day limit imposes no cost on plaintiff, and only a de minimis cost on the sender. Accordingly, defendants' seizure of the enclosures in the October 7, 2017 mailings from Barbara Babcock and Jose Delacruz did not violate plaintiff's constitutional rights.

D. The Determination that The Court Decision And Order Sent By Barbara Babcock Were Contraband Was Appropriate And Made In Compliance With The Inmate Mail Regulation.

The decision and order in a federal case sent to plaintiff by Barbara Babcock, and received on August 18, 2017, were deemed contraband and withheld in their entirety pursuant to 103 CMR 481.20, Prohibition on Inmate-to-inmate Correspondence, which provides:

An inmate may be permitted to correspond with an inmate confined in any other correctional or penal institution in the Commonwealth only if the other inmate is either a member of the inmate's immediate family or is a party in a legal action in which both inmates are parties representing themselves. The Superintendent may approve such correspondence in other exceptional circumstances, with particular regard to the nature of the relationship between the two inmates, and the security level of the institution.

103 CMR 481.20, Prohibition on Inmate-to-inmate Correspondence

The Supreme Judicial Court of Massachusetts held in the case of Com. v. Jessup, 421 Mass. 121 (2015) that the prohibition on inmate to inmate correspondence "is

reasonably related to legitimate penological interests,” as the prohibition “was established to ensure safety and security within the prison.” Id. The Court opined that the prohibition “recognizes that inmate-to-inmate correspondence has the potential to be significantly disruptive, as such correspondence may involve planned escapes, acts of violence, or other schemes in the cases of pretrial detainees, including witness intimidation or tampering with evidence before trial.” Id.

Plaintiff argues in his grievance that Ms. Babcock sent the items to plaintiff because they were connected to the case of her son and, as such, he was permitted to receive them because inmates are allowed to share documents with another inmate for “advice and assistance.” While it is true that inmates in the same facility may assist one another with legal work, the Department treats inmate correspondence through a third party in the same manner as it would direct correspondence between two inmates at different facilities. SMF ¶ 21. The Department’s interpretation of its own policy is not just rational but necessary, warranting great deference, because any other interpretation would void the intent of the policy, allowing inmates to circumvent security. See Ten Local Citizen Grp., 457 Mass. at 228 (courts accord “considerable deference” to an agency’s interpretation of its own regulations, and a party challenging that interpretation faces a “formidable burden” to show that the agency’s interpretation is not rational). Thus, the legal decision and order were properly seized as contraband, and plaintiff’s claim must be denied.

Lastly, in his motion for judgment on the pleadings plaintiff argues that he has been assisting other inmates with legal work for years and this has never been an issue. Defendants submit that the Supreme Judicial Court has expressly held in an equal

protection context that Massachusetts inmates “do not have an unqualified right to work and receive the attendant benefits.” Jackson v. Russo, 495 F.Supp.2d 225, 229 (2007), citing Jackson v. Hogan, 388 Mass. 376, 379 (1983) See also Murphy v. Cruz, 52 Mass.App. Ct. 314, 319 (2001). Accordingly, defendants’ seizure of the third party correspondence as inmate to inmate correspondence was not in violation of plaintiff’s constitutional rights.

III. DEFENDANTS PROVIDED PLAINTIFF WITH DUE PROCESS.

Inmates may not be deprived of property without due process. O'Malley v. Sheriff of Worcester County, 415 Mass. 132, 135 (1993). Apart from plaintiff’s vague allegation of a due process violation, the courts have already determined that 103 CMR 403, Inmate Property, provides sufficient due process in connection with the seizure and disposal of contraband. See Puleio v. Department of Correction & Others, 75 Mass.App.Ct. 1116 (2016) (inmate whose property was disposed of in accordance with 103 CMR 403 unable to sustain a claim for procedural due process) (citations omitted). Specifically, 103 CMR 403.15, Disposal of Inmate Property, delineates the process for disposing of an item considered contraband:

- (1) Within one week of property being deemed contraband, the Property Officer at the facility temporarily storing the contraband shall initially notify the inmate of the item being stored by a contraband notification form. The inmate may elect to dispose of the items by one of the following methods:
 - (a) have the property retrieved by a visitor;
 - (b) have the property mailed out to a specified destination;
 - (c) have the property disposed of as seen fit by the institution.
- (2) Once the inmate has selected the method of disposal and responded to the Property Officer in writing, arrangements for disposal will be made. The property shall be properly marked and recorded in a log book noting the date, method and address sent if appropriate.
- (3) If the inmate does not respond within 30 days of the initial contraband notification a final notification shall be sent to the inmate. An additional 30 day period shall be provided for the inmate to respond. If there is no response within the designated time period or if the property has not been disposed of within 90 days

the property will be disposed of by the facility in accordance with 103 CMR 403.15(1)(c).

Defendants in this matter complied with 103 CMR 403.15 when they issued contraband notices, and gave plaintiff the opportunity to dispose of the items deemed contraband. Plaintiff has only been deprived of possession of the mail items, and not ownership of the property. Therefore, this does not qualify as a deprivation of property, much less a deprivation without due process. Mason v. Department of Correction, 75 Mass. App. Ct. 111 (2009), citing Williams v. Meese, 926 F.2d 994, 998 (10th Cir.1991) (no deprivation of property where prisoner's ring and postage stamps were sent to recipient of his choosing); Blackwell v. Lisa Mitchell, et al, Plymouth Superior Court No. 1683CV358 (Leibensperger, E.) (“[T]here is no authority to suggest that the procedure in 103 CMR 403.14 for disposal of items considered contraband violates due process.”); Hatten v. White, 275 F.3d 1208, 1210 (10th Cir.2002) (difference between right to own property and right to possess property while in prison); Searcy v. Simmons, 299 F.3d 1220, 1229 (10th Cir.2002), cert. denied, 546 U.S. 1125 (2006) (prisoner still owner of property after prisoner refused to sign consent form and prison officials sent property to his relatives when his security level changed); Pryor-El v. Kelly, 892 F.Supp. 261, 271 (D.D.C.1995) (no deprivation of property when prisoner was allowed to send it to an address of his choosing and thus still retained control over it); Stansbury v. Hannigan, 265 Kan. 404, 420, cert. denied, 525 U.S. 1060 (1998); Small v. Horn, 554 Pa. 600, 614 (1998). Martin v. Spalding, 133 Idaho 469, 473 (Ct.App.1998). Accordingly, defendants’ actions did not violate plaintiff’s due process rights.

IV. DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY.

It is well established that "[g]overnmental officials performing discretionary duties generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right ... in the light of pre-existing law the unlawfulness must be apparent." Anderson v. Creighton, 483 U.S. 635, 640 (1987).

Once a defendant raises a qualified immunity defense, the burden is on the plaintiff to show that the law was clearly established at the time of the alleged violation. Dixon v. Richer, 922 F.2d 1456, 1460 (10th Cir. 1991). If the plaintiff does not meet this initial burden, "the government official is properly spared the burden and expense of proceeding any further." Powell v. Mikulecky, 891 F.2d 1454, 1457 (10th Cir. 1989). "Indeed [the Supreme Court has] made clear that the 'driving force' behind the creation of the qualified immunity doctrine was a desire to ensure that 'insubstantial claims' against government officials [will] be resolved prior to discovery.'" Pearson v. Callahan, 129 S.Ct. 808, 808 (2009), quoting Anderson v. Creighton, *supra* at 640 n.2. See Ashcroft v. Iqbal, *supra* at 1953.

The second prong concerns whether the constitutional right was clearly established at the time of the alleged violation and whether a reasonable actor, similarly situated, would have understood that his conduct violated a clearly established right. Saucier v. Katz, 533 U.S. 194; Hope v. Pelzer, 536 U.S. 730 (2002); Maldonado v. Fontanes, 568 F.3d 263, 269 (1st Cir. 2009); Suboh v. District Attorney Office of Suffolk District, 298 F.3d 81, 89-90 (1st Cir. 2002); St. Hilaire v. City of Laconia, 71 F.3d 20, 24

(1st Cir. 1995), cert. den. 518 U.S. 1017 (1996). Qualified immunity turns on the "objective legal reasonableness" of the official's action, in light of legal rules that were "clearly established" at the time the action was taken. Anderson v. Creighton, supra at 639; Wood v. Clemons, 89 F.3d 922, 927 (1st Cir. 1996). The inquiry "must be undertaken in light of the specific context of the case, not as a broad general proposition." Saucier v. Katz, supra at 200.

As set forth above, at all times defendants actions were taken pursuant to Department policy and 103 CMR 481, Inmate Mail. There is no evidence that plaintiff had a clearly established right to any of the material which was confiscated. As such, the plaintiff has failed to make sufficient allegations that any of the individual defendants for constitutional or regulatory violations.

CONCLUSION

WHEREFORE, defendants respectfully requests that their motion for summary judgment be ALLOWED, and this Court enter judgment on behalf of defendants on all counts.

Respectfully Submitted,
DEFENDANTS
By their attorneys,
NANCY ANKERS WHITE
Special Assistant Attorney General

Dated: April 21, 2020

/s/ Heidi D. Handler
Heidi D. Handler, BBO# 561474
Department of Correction-Legal Division
70 Franklin Street, Suite 600
Boston, MA 02110-1300
(617) 727-330, ext. 1187
Heidi.Handler@doc.state.ma.us

CERTIFICATE OF SERVICE

I, Heidi D. Handler, counsel for defendants, hereby certify that on this date, I served a copy of the forgoing document on plaintiff by first class mail, postage prepaid, to his address as follows:

Tony Gaskins
S.B.C.C.
P.O. Box 8000
Shirley, MA 01464

Dated: April 21, 2020

/s/Heidi D. Handler
Heidi D. Handler

MR. TONY B. GASKINS

S.B.C.C.

P.O. Box 8000

SHIRLEY, MA. 01464

DENNIS P. McMANUS

CLERK OF COURTS

DATED:

WORCESTER SUPERIOR COURT

225 MAIN STREET, ROOM 1008

WORCESTER, MA. 01608

RE: GASKINS V. SILVA, ET AL.,

NO. 1885CV0054-A

DEAR MR. McMANUS,

ENCLOSED FOR FILING PLEASE FIND MY
OPPOSITION MOTION AND MEMORANDUM OF
LAW TO DEFENDANTS' "MOTION FOR SUMMARY
JUDGMENT."

THANK YOU FOR YOUR ATTENTION TO THIS
MATTER.

SINCERELY,

ENCLOSURES

CC: HEIDI D. HANDLER,
ESQ.

TONY B. GASKINS, PRO SE

R.A.55

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT
No. 1885CV0054-A

TONY B. GASKINS,
PLAINTIFF

V.

STEVEN SILVA, ET AL.,
DEFENDANTS.

PLAINTIFF'S MOTION IN OPPOSITION
TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

NOW COMES THE PLAINTIFF IN THE
ABOVE-CIVIL MATTER FILES, PURSUANT TO
MASS. R. CIV. P. 56, THIS MOTION IN OP-
POSITION TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT.

IN SUPPORT OF THIS MOTION, PLAINTIFF
HAS ATTACHED A SUPPORTING MEMORANDUM

R.A. 56

OF LAW AND EXHIBITS.

RESPECTFULLY SUBMITTED,

DATED:

TONY B. GASKINS, PRO SE
SBCC
P.O. Box 9000
SHIRLEY, MA. 01464

CERTIFICATE OF SERVICE

I, TONY GASKINS, CERTIFY THAT I
CAUSED A TRUE COPY OF THE FOREGOING
MOTION AND MEMORANDUM OF LAW, TO
BE SERVED ON, HEIDI D. HANDLER, ESQ.,
DEPT. OF CORRECTIONS, LEGAL DIVISION, 70
FRANKLIN STREET, SUITE 600, BOSTON, MA.
02110-1322, BY FIRST CLASS MAIL, POSTAGE-
PRE-PAID.

DATED:

TONY B. GASKINS, PRO SE

R.A. 57

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT
NO. 1885CV00574-A

TONY B. GASKINS,
PLAINTIFF,

V.

STEVEN SILVA, ET AL.,
DEFENDANTS.

PLAINTIFF'S MEMORANDUM OF LAW
IN SUPPORT OF HIS MOTION IN OPPOSITION
TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

THE PLAINTIFF, TONY GASKINS, SUBMITS
THIS MEMORANDUM OF LAW IN SUPPORT OF
HIS MOTION OPPOSING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT.

STATEMENT OF UNDISPUTED FACTS

ON JULY 26, 2017, MR. GASKINS' DAUGHTER,

HEGHER LOVA, MAILED HIM A BIRTHDAY CARD THAT WAS WRITTEN WITH A GLITTER PEN. HE RECEIVED A CONTRABAND NOTICE THAT IT WAS NOT AUTHORIZED BY 103 CMR 403, INVIOLATE PROPERTY POLICY. EXHIBIT A.

ON AUGUST 18, 2017, CITIZEN BARBARA BARBOCK MAILED MR. GASKINS LEGAL DOCUMENTS BUT THE DEFENDANTS WITHHELD SAID DOCUMENTS. EXHIBIT B.

TRIAL TRANSCRIPTS WERE SENT TO PLAINTIFF IN WHICH HE ONLY RECEIVED FIVE PAGES. BECAUSE THE DEFENDANTS SAID IT WAS A PUBLICATION. EXHIBIT C.

THE CO-CALLED GLITTER MAIL NOTICE WAS NOT IN PLACE AT THE TIME OF THE INCIDENT WITH GASKINS' DAUGHTER MAILING HIM HIS BIRTHDAY CARD IN JULY, 2017. EXHIBIT D.

RECENTLY, PLAINTIFF GASKINS MAILED HIS REVISED MOTION FOR TRO AND PRELIMINARY INJUNCTION TO CO-PLAINTIFF, MICHAEL HUNTER IN GASKINS, et al. v. TURCO, et al., No. 1885CV01015 (WORCESTER SUPERIOR COURT), WHERE DEFENDANT SILVA ONLY PRO-

R.A. 59

VIDEO HIM ONLY WITH FIVE PAGES STAT-
ING IT WAS A PUBLICATION. EXHIBIT E.

THE MAIL REGULATION, 103 CMR 481.13
(2)(a)-(h), WHICH HAS THE FORCE OF LAW,
DOES NOT GRANT THE DEFENDANTS SUCH
AUTHORITY TO CENSOR COMMUNICATION VIA
MAIL, UNLESS IT COMPLIES WITH THE RE-
GULATION, SUPRA. EXHIBIT F.

THE GLITTER MAIL RESTRICTION WAS
NOT A PART OF THE SO-CALLED STANDARD
OPERATION PROCEDURE ("SOP"), BUT A
"DIRECTIVE" BY EITHER DEFENDANT
SILVA OR THEN COMMISSIONER TURCO.
EXHIBIT G.

STATEMENT OF FACTS

ON 8/24/17, PLAINTIFF WAS MAILED A
BIRTHDAY CARD AND PICTURES FROM HIS
DAUGHTER, HESHEY SOVA. THE MAILROOM
OFFICERS AND CAPTAIN WILLIAMS CONTRA-
BAND HIS BIRTHDAY CARD AND PICTURES. .
GASKINS WROTE AN INFORMAL COMPLAINT
ABOUT NOT RECEIVING THE PICTURES. OF
HIS FAMILY WERE [EVENTUALLY] PROVIDED

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TO HIM, ABSENT THE BIRTHDAY CARD.
COMPL. AT PARA. 8. ON 8/18/17, PLAINTIFF
WAS MAILED LEGAL DOCUMENTS FROM HIS
FRIEND, BARBARA BABCOCK, AND THE MAIL-
ROOM OFFICERS AND CAPTAIN WILLIAMS
CONTRABAND THE LEGAL DOCUMENTS. EXHIBITS
B.E.C.⁴ ON 10/17/17, PLAINTIFF WAS MAILED
AN APPEAL BRIEF FROM JOSE DELACRUZ,
AND DEFENDANT WILLIAMS ONLY PROVIDED
HIM WITH FIVE PAGES OF THE BRIEF AND
CONTRABAND THE REST OF IT. EXHIBIT H.
COMPL. AT PARA. 11. IN RESPONSE TO THE
TRIAL TRANSCRIPTS, CAPTAIN WILLIAMS
GAVE IT TO THE PARALEGAL, DEFENDANT
PINEDA WHO, IN TURN, GAVE PLAINTIFF
ONLY FIVE PAGES OF THE SIX VOLUMES
OF TRANSCRIPTS, AND SAID THAT THE REST
WERE CONTRABAND. COMPL. AT PARA.
12. ALSO, DEFENDANT STATED TO GASKINS
THAT THE LEGAL DOCUMENTS WOULD HAVE
TO BE SENT BACK OUT AND MAILED INTO
THE FACILITY BY AN ATTORNEY OR COURT.
GASKINS FILED A GRIEVANCE. COMPL. AT
PARA. 13. THERE ARE NO SUCH REGULATIONS

↑ SEE COMPLAINT AT PARAGRAPH 10.

IN EXISTENCE THAT GRANTS THE DEFENDANTS FROM WITHHOLDING LEGAL DOCUMENTS MAILED INTO THE PRISON BY CITIZENS AND/OR THIRD PARTIES. SEE 103 CMR 48.15. COMPL. AT PARA. 14.

ARGUMENT

I. STANDARD OF REVIEW

A PARTY MOVING FOR SUMMARY JUDGMENT WHO DOES BEAR THE BURDEN OF PROOF AT TRIAL MAY DEMONSTRATE THE ABSENCE OF A TRIABLE ISSUE EITHER BY SUBMITTING AFFIRMATIVE EVIDENCE NEGATING AN ESSENTIAL ELEMENT OF THE NON-MOVING PARTY'S CASE, OR BY SHOWING THAT THE NON-MOVING PARTY HAS NO REASONABLE EXPECTATION OF PROVING AN ESSENTIAL ELEMENT OF ITS CASE AT TRIAL. KOUROUVACILIS, 410 MASS. AT 716. IN DETERMINING WHETHER THERE ARE GENUINE ISSUES OF MATERIAL FACT, THE COURT MAY CONSIDER PLEADINGS, DEPOSITIONS, ANSWERS TO INTERROGATORIES, ADMISSIONS ON FILE, AND AFFIDAVITS. COMMUNITY NATIONAL BANK V. DAWES, 369 MASS. 550, 553 (1976);

MASS. R. CIV. P. 56(c). HOWEVER, THE PARTY
OPPOSING SUMMARY JUDGMENT CANNOT
DEFEAT THE MOTION SIMPLY BY RESTING
ON THE PLEADINGS, AND MERE ASSERTIONS
THAT THERE ARE DISPUTED FACTS, LAOHADE
V. EUSNER, 405 MASS. 207, 209 (1987). THE
NON-MOVING PARTY MUST OPPOSE THE
MOTION WITH ADMISSIBLE EVIDENCE, ON
THE ISSUE IN ORDER TO DEFEAT THE
SUMMARY JUDGMENT MOTION. CELOTEX
CORP. V. CATRETT, 477 U.S. 317, 323 (1986).

II. PLAINTIFF'S MAIL ITEMS WERE
NOT PROPERLY DEEMED CONTRABAND
PURSUANT TO 103 CMR 481, INMATE
MAIL.

"[A] PROPERLY PROMULGATED REGULATION
HAS THE FORCE OF LAW . . . AND MUST BE
ACCORDED ALL THE DEFERENCE DUE TO
A STATUTE." BOBDEAN, INC. V. COMMR OF PUB.
HEALTH, 388 MASS. 707, 723, CERT. DENIED,
464 U.S. 936 (1983). REGULATIONS HAVE FORCE
OF LAW AND ARE GIVEN DEFERENCE, BUT

AGENCY GUIDELINES DO NOT HAVE FORCE OF LAW. DARREN V. NOYES, 27 MASS. L. REP. 448 (2010).

A. DEFENDANTS SEIZURE OF THE BIRTHDAY CARD WRITTEN WITH A GLITTER PEN WAS NOT SEIZED IN ACCORDANCE WITH 103 CMR 481.13, AND THE CLAIMS ARE NOT MOOT.

THE DEFENDANTS, FOR THE FIRST TIME NOW ARGUES THAT THE BIRTHDAY CARD WAS SEIZED PURSUANT TO 103 CMR 481.13 (2)(b). THAT SECTION READS THAT THE CORRESPONDENCE "MAY" BE DISAPPROVED IF "THE CORRESPONDENCE FACILITATES THE INTRODUCTION OF CONTRABAND DRUGS, ETC." Id. THIS DOES NOT APPLY TO THE CASE AT BAR.

IN THE CASE AT BAR, THE DEFENDANTS ARE REGULATED PURSUANT TO 103 CMR 481.00, et seq., AS WELL AS THE PLAINTIFF'S

RIGHTS ARE PROTECTED UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ART. 12 AND 16 OF THE MASSACHUSETTS DECLARATION OF RIGHTS. WHAT THE DEFENDANTS HAVE DONE AND ARE DOING - AS IT RELATES TO PRISONERS' MAIL - IS PERMITTING CENSORSHIP OF CONSTITUTIONALLY PROTECTED EXPRESSION WITHOUT ADEQUATE JUSTIFICATION. SEE PROCTOR V. MARTINEZ, 416 U.S. 396, 405 (1974) ("[A] POLICY OF JUDICIAL RESTRAINT CANNOT ENCOMPASS ANY FAILURE TO TAKE COGNIZANCE OF VALID CONSTITUTIONAL CLAIMS WHETHER ARISING IN A FEDERAL OR STATE INSTITUTION").

THE PROCTOR COURT STATED THAT "[C]OMMUNICATIONS BY LETTER IS NOT ACCOMPLISHED BY THE ACT OF WRITING WORDS ON PAPER, RATHER, IT IS EFFECTED ONLY WHEN THE LETTER IS READ BY THE ADDRESSEE. BOTH PARTIES TO THE CORRESPONDENCE HAVE AN INTEREST IN SECURING THAT RESULT, AND

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CENSORSHIP OF THE COMMUNICATION BETWEEN [THEM] NECESSARILY IMPINGES ON THE INTEREST OF EACH. WHATEVER THE STATUS OF A PRISONER'S CLAIM TO UNCENSORED CORRESPONDENCE WITH AN OUTSIDER, IT IS PLAIN THAT THE LATTER'S INTEREST IS GROUNDED IN THE FIRST AMENDMENT'S GUARANTEE OF FREEDOM OF SPEECH. AND THIS DOES NOT DEPEND ON WHETHER THE NONPRISONER CORRESPONDENT IS THE AUTHOR OR INTENDED RECIPIENT OF A PARTICULAR LETTER, FOR THE ADDRESSEE AS WELL AS THE DENDER OF DIRECT PERSONAL CORRESPONDENCE DERIVES FROM THE FIRST AND FOURTEENTH AMENDMENTS A PROTECTION AGAINST UNJUSTIFIED GOVERNMENTAL INTERFERENCE WITH THE INTENDED COMMUNICATION." 416 U.S. AT 408-409 (EMPHASIS ADDED).

THE UNITED STATES SUPREME COURT OUTLINED TWO PROPOS, IF MET, WOULD ALLOW THE DEFENDANTS TO CONTINUE TO RESTRICT CERTAIN INCOMING CORRESPONDENCE, AND THAT IS 1) THE REGULATION OR PRACTICE

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IN QUESTION MUST FURTHER AN IMPORTANT OR SUBSTANTIAL GOVERNMENTAL INTEREST UN-RELATED TO THE SUPPRESSION OF EXPRESSION, AND 2) THE LIMITATION OF FIRST AMENDMENT FREEDOMS MUST BE NO GREATER THAN IS NECESSARY OR ESSENTIAL TO THE PROTECTION OF THE PARTICULAR GOVERNMENTAL INTEREST INVOLVED. PROCTOR V. MARTINEZ, 916 U.S. AT 413.

ON JULY 26, 2017, PLAINTIFF'S DAUGHTER, HESKEY SOVA, MAILED HIM A BIRTHDAY CARD THAT WAS WRITTEN WITH GLITTER PEN. HE RECEIVED A CONTRABAND NOTICE STATING THAT, "ITEM(S) NOT AUTHORIZED BY 103 CMR 903, INMATE PROPERTY POLICY." EXHIBIT A. SO, PLAINTIFF FILED A GRIEVANCE, AND HIS RESPONSE WAS, "YOUR GRIEVANCE IS DENIED. THE MAIL ROOM WAS CONTACTED AND IT HAS BEEN DETERMINED THAT THE MAIL YOU WERE REFERENCING IS CURRENTLY LOCATED WITH CONTRABAND MAIL ITEMS DUE TO IT BEING WRITTEN ON WITH GLITTER PEN. GLITTER IS CONSIDERED CONTRABAND AND WILL NOT BE ALLOWED WITHIN THE INSTITUTION. YOU HAVE

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UNTIL 10/26/17 TO ANSWER THE CONTRABAND SLIP TO HAVE IT MAILED OUT AT YOUR EXPENSE. IF YOU FAIL TO RESPOND BY 10/26/17 THE CONTRABAND WILL BE DISPOSED OF AS SEEN FIT BY THE INSTITUTION." EXHIBIT A.

NOWHERE IN THE RESPONSE TO THE GRIEVANCE DOES THE PRISON OFFICIALS SAY IT IS NOT BEING ALLOWED BECAUSE IT MEETS THE PROVISIONS OF 103 CMR 481.13(h), OR STATED AN IMPORTANT GOVERNMENTAL INTEREST UNRELATED TO THE SUPPRESSION OF EXPRESSION TO JUSTIFY RESTRICTING THE PLAINTIFF FROM RECEIVING THE BIRTHDAY CARD SENT TO HIM AND WRITTEN WORDS TO HIM IN GLITTER PEN INK, AS BEING A KNOWN SECURITY THREAT THAT WOULD NOT PERMIT IT FROM ENTERING THE FACILITY. IT IS CLEAR FROM THE RECORD THAT THE DEFENDANTS ARE TAKING A "JUST BECAUSE WE CAN DO IT" APPROACH INSTEAD OF HAVING A LEGITIMATE REASON BEHIND THE DIRECTIVE, A GOVERNMENTAL NON-EXISTENT INTEREST THAT IS CLEARLY UNRELATED TO THE SUPPRESSION OF EXPRESSION.

NOWHERE IN THE MAIL REGULATIONS DOES IT STATE THAT "GLITTER MAIL" IS NOT PERMITTED TO ENTER

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THE FACILITY. GIFT CARDS CONTAIN GLITTER, SUCH AS CHRISTMAS CARDS, "I LOVE YOU" CARDS, ETC. THESE SUCH ITEMS WERE PERMITTED WITHOUT INCIDENT FOR DECADES. NOW THE DEFENDANTS JUST WANT TO DO AWAY WITH PRISONERS ACCESSING THIS SORT OF MAIL ITEMS WITHOUT ANY REASONABLE JUSTIFICATION.

LET'S LOOK AT THE FACTS. MR. GASKINS' DAUGHTER MAILED HIM THE BIRTHDAY CARD IN JULY, 2017. AT THAT TIME, NOR THEREAFTER WAS THERE ANY POLICY, NOTIFICATION IN PLACE THAT SUGGESTS THAT GLITTER WAS CONTRABAND AND NOT ALLOWED INTO THE FACILITY. THIS MAY BE BECAUSE NO SUCH POLICY EXISTS. HOWEVER, THE PLAINTIFF RECEIVED THROUGH DISCOVERY WHAT APPEARS TO BE TWO (2) NOTICES: ONE WITH THE DATE "DECEMBER 4, 2017" BY DEPUTY SUPERINTENDENT, BRIAN McDONALD, (EXHIBIT I), AND ONE WITH THE DATE "DECEMBER 6, 2018" FROM DEPUTY SUPERINTENDENT, CHRISTOPHER PHELPS (EXHIBIT II), WHERE THEY BOTH STATE:

"PLEASE BE ADVISED THAT THIS IS TO SERVE AS A REMINDER THAT STAFF, VISITORS AND VOLUNTEERS ARE NOT ALLOWED TO ENTER THE INSTITUTION WHILE WEARING ANY TYPE OF GLITTER MAKEUP MATERIALS.

ADDITIONALLY, ANY MAIL TO INCLUDE CARDS, LETTERS, ETC., CONTAINING A GLITTER TYPE SUBSTANCE WILL NOT BE ALLOWED INTO THE FACILITY AND WILL BE CONSIDERED CONTRABAND.

GLITTER OR GLITTER TYPE PRODUCTS SHALL NOT BE ALLOWED WITHIN THE FACILITY UNLESS APPROVED BY THE SUPERINTENDENT."

FIRST, THESE NOTICES WERE NEVER VIEWED BY THE PLAINTIFF. SECONDLY, THE NOTICES ARE NOT A PART OF A POLICY OR CMR. AND IF THE DEFENDANTS ARE ATTEMPTING TO EXCLUDE THE BIRTHDAY CARD MAILED TO MR. GASKINS FROM HIS DAUGHTER, THEN PURSUANT TO 103 CMR 481.13(2)(2)-(b) (MAIL REGULATIONS) WERE TO BE IMPLEMENTED IN DETERMINING WHETHER TO EXCLUDE THE CORRESPONDENCE. UNDER THAT SECTION (b), WHICH WOULD APPLY TO THE FACTS OF THIS CASE, DOES NOT APPLY DUE TO THE FACT THAT THE CARD DID NOT "FACILITATE THE INTRODUCTION OF CONTRABAND DRUGS, ETC." *Id.* THIS IS THE MAIL REGULATION WHICH HAVE THE "FORCE OF LAW," AND MUST BE COMPLIED WITH, SEE ROYCE V. COMMISSIONER OF CORRECTION, 390 MASS. 425, 427 (1983) (REGULATIONS HAVE THE "FORCE OF LAW"). THE CARD'S WRITTEN WORDS WERE

IN GLITTER PEN, THERE IS NOTHING IN THIS RECORD EVIDENCE TO EVEN SUGGEST THAT PLAINTIFF'S DAUGHTER HAD SECRETED SOME SORT OF CONTRABAND IN THE WRITTEN CORRESPONDENCE/BIRTHDAY CARD. IF IT WAS SUSPECTED, IT WAS NEVER TESTED TO SEE IF IT DID CONTAIN SOME SORT OF ILLEGAL SUBSTANCE THAT WOULD DEEM IT CONTRABAND. THAT WAS NOT DONE, ALTHOUGH IT WOULD BE REQUIRED TO JUSTIFY THE NON-RECEIVERSHIP OF THE CARD BY PLAINTIFF.

IN FORMER CAPTAIN SHERRY WILLIAMS' ADMISIONS, SHE ADMITS IN RESPONSE NO. 3, "DEFENDANT FURTHER ADMITS THAT AT ALL TIMES RELEVANT TO PLAINTIFF'S COMPLAINT, ANY CORRESPONDENCE OR ITEMS THAT CONTAINED GLITTER WERE NOT ALLOWED INTO THE FACILITY DUE TO SAFETY AND SECURITY CONCERNS. . . " EXHIBIT J. CAPTAIN WILLIAMS DENIES IN HER ADMISIONS THAT SHE VIOLATED GASKINS FIRST AMENDMENT RIGHTS WHEN SHE WITHHELD THE LEGAL DOCUMENTS MAILED FROM A THIRD PARTY. SEE RESPONSE NO. 7. Id.

IN DEFENDANT LYNCH'S INTERROGA-
TORIES, HE ADMITS THAT HE IS REQUIRED TO
FOLLOW THE MAIL REGULATIONS, POLICIES AND
PROCEDURES. EXHIBIT 1, AT INTERROGATORY
NO. 3. WHEN PLAINTIFF POSED THE QUESTION,
"WHO TOLD YOU TO CONTRABAND LEGAL MAIL
MAILED INTO TONY GASKINS FROM A THIRD
PARTY?" LYNCH RESPONDED THAT "[THE MAIL
WAS SEIZED PURSUANT TO 103 CMR 981, INMATE
MAIL, "I.D. AT INTERROGATORY NO. 4. HE ALSO
STATES IN HIS INTERROGATORIES THAT THE REGU-
LATIONS THAT AUTHORIZES HIM TO WITHHOLD LEGAL
MAIL MAILED IN TO PLAINTIFF ARE 103 CMR
981, INMATE MAIL, 103 CMR 908, INMATE PROPERTY,
AND 103 CMR 985, INMATE DISCIPLINE. HE SAYS
THAT THIS ALSO PERMITS HIM TO WITHHOLD CARDS,
OR LETTERS WITH GLITTER AS WELL. I.D. AT
INTERROGATORIES NO. 6 & 7.

IN REGARDS TO THE WITHHOLDING OF THE
GLITTER WRITTEN CARD, LYNCH COULD NOT
IDENTIFY WHAT STAFF MEMBER IMPLEMENTED
THE RESTRICTION. HE STATED, "I HAVE NO PER-
SONAL KNOWLEDGE OF WHAT STAFF MEMBERS

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OF THE DEPARTMENT OF CORRECTION CREATED AND/OR IMPLEMENTED SPECIFIC DEPARTMENT OF CORRECTION REGULATIONS, POLICIES, OR PROCEDURES . . . "Id. at INTERROGATORY NO. 11.

WHAT IS ALREADY KNOWN IS THAT THE MAIL REGULATIONS DOES NOT GRANT SUCH AUTHORITY TO WITHHOLD GLITTER MAIL, AND THERE IS NO WRITTEN POLICY IN CONFORMANCE WITH THE MAIL REGULATIONS THAT STATES AS SUCH. 103 CMR 481 (MAIL REGULATION) IS SILENT ON THE SUBJECT MATTER IN CONTRAST TO THE DEFENDANTS ADMISSIONS AND INTERROGATORIES.

103 CMR 430, INMATE DISCIPLINE, DOES NOT GRANT ANY AUTHORITY TO SUCH AN ACTION BECAUSE IT ONLY DEALS WITH DISCIPLINARY PUNISHMENT AND SANCTIONS. MOREOVER, THE MAIL PROCEDURES OF SBCC WAS PROVIDED AND APPROVED BY THE CURRENT SUPERINTENDENT ON 1/28/18, AND AS OF 4/30/19 NO SUCH MENTION OF GLITTER IS LISTED WITHIN SAID PROCEDURES. EXHIBIT 4

THE DEFENDANTS ATTORNEY OF RECORD ARGUES THAT BECAUSE THE D.O.C. IS PHOTOCOPYING

ALL INCOMING NON-PRIVILEGED MAIL, THAT THIS MATTER IS MOOT. DEF'TS MOTION AND MEMORANDUM OF LAW AT P.8. THE PHOTOCOPYING OF THE INCOMING MAIL POLICY IS CURRENTLY UNDER LITIGATION IN THE MATTER OF GASKINS, ETAL. V. TURCO, ETAL., WORCESTER SUPERIOR COURT NO. 1885 CV01665. SAME COUNSEL FOR DEFENDANTS IN THIS MATTER IS THE SAME IN THE MAIL PHOTOCOPYING LITIGATION. THE MATTER GOT THROUGH DISMISSAL AND IS STILL IN THE DISCOVERY PHASE. THEREFORE, MR. GASKINS STILL HAVE A PERSONAL STAKE IN ITS OUTCOME, WHEREAS THE QUESTION OF CENSURING SPEECH IS STILL OPEN. SEE BORNSTEIN V. Bd. OF REGISTRATION IN OPTOMETRY, 403 MASS. 621, 627 (1998) (CITATION OMITTED).

- A. THE SEIZURES OF ALL BUT FIVE PAGES OF THE TRIAL TRANSCRIPTS SENT BY JOSE DELACRUZ AND ALL BUT FIVE PAGES OF THE DECISION, AS WELL AS THE LEGAL DOCUMENTS SENT BY BARBARA BARBOCK VIOLATED THE 1ST AND 14TH AMENDMENTS, AND ARTICLE 12.

MR. GASKINS IS PERMITTED TO CORRESPOND WITH OTHER PRISONERS NOT WITHIN THE DEPARTMENT OF CORRECTION IN MASSACHUSETTS. SEE 103 CMR 481.20(S). ONE SUCH PRISONER MR. GASKINS HAS BEEN CORRESPONDING WITH AND HELPING WITH LEGAL MATTERS IS JOSE DELACRUZ, WHO IS CURRENTLY INCARCERATED IN NEW JERSEY STATE PRISON. RECEIVING LEGAL DOCUMENTS FROM MR. DELACRUZ HAS NEVER BEEN A PROBLEM UNTIL THIS PARTICULAR POINT IN TIME, AND THEREAFTER. MR. DELACRUZ MAILED PLAINTIFF A DECISION HE RECEIVED FROM THE FEDERAL COURT IN NEW JERSEY WHICH CONTAINED FIFTEEN PAGES. INSTEAD OF PROVIDING HIM WITH THE ENTIRE DOCUMENT, THE MAILROOM WITHHELD 10 PAGES AND SENT MR. GASKINS ONLY FIVE PAGES. IN THE CONTRABAND NOTICE, IT STATES: "ITEM(S) NOT AUTHORIZED BY 103 CMR 403, INMATE PROPERTY POLICY." EXHIBIT M. MR. GASKINS GRIEVED THE MATTER AND RECEIVED THE FOLLOWING RESPONSE:

"GRIEVANCE IS DENIED, INCOMING MAIL CONTAINING LEGAL DOCUMENTS, BUT NOT MAILED BY AN AUTHORIZED PERSON LISTED IN 103 CDR 481.18 IS NOT CONSIDERED PRIVILEGED MAIL. THE CONTENTS OF THE MAIL WERE PHOTOCOPIED ATTACHED TO PERSONAL CORRESPONDENCE FORWARDED BY A PERSON NOT SPECIFIED IN SECTION 10, THUS CONSIDERING THE MATERIAL A "PUBLICATION" WHERE INMATES ARE ALLOWED TO RECEIVE A MAXIMUM OF FIVE (5) PAGES PER DAY."

(EXHIBIT N).

THE CORRESPONDENCE CONTAINED LEGAL DOCUMENTS, NOT ANY SORT OF "PUBLICATIONS" AS SUGGESTED BY THE DEFENDANTS IN THEIR GRIEVANCE RESPONSE AND ARGUMENT BEFORE THE COURT. THIS, TOO, APPLIES AS FOR WITHHOLDING OF THE LEGAL DOCUMENTS SENT TO HIM THROUGH HIS FRIEND, BARBARA BABCOCK, WHEN SHE MAILED HIM A FEDERAL DECISION IN A CASE MR. GASKINS WAS HELPING HER SON WITH AS PERMITTED UNDER JOHNSON V. AVERY, 393 U.S. 483 (1969), WHICH PROVIDES HIM WITH THE PROTECTION, AS A JAILHOUSE LAWYER TO ASSIST OTHER INMATES IN LEGAL MATTERS. SEE EXHIBIT O. THIS SAME TACTIC OF THE DEFENDANTS WAS DONE TO PLAINTIFF IN A CASE THAT SAME COUNSEL IN THIS MATTER IS ON, WHERE

PLAINTIFF MAILED TO HIS CO-PLAINTIFF, MICHAEL HUNTER, A "MOTION FOR TRO AND PRELIMINARY INJUNCTION" IN WORCESTER SUPERIOR COURT NO. 1885CV01665D, AND HE WAS ONLY PROVIDED FIVE PAGES. DEFENDANT SILVA, WHO IS THE ONE COMMITTED THIS ACT, IS THE PERSON BEING SUED IN THIS MATTER. THIS IS A CLEAR INTERFERENCE OF PLAINTIFFS ACCESS TO THE COURTS AND HIS CO-PLAINTIFF IN A DIFFERENT CASE ARGUED BY CURRENT COUNSEL FOR DEFENDANTS AS MOTIONS HIS GLITTER MAIL CLAIM. THE ACTIONS OF THE DEFENDANTS ARE IN DIRECT VIOLATION OF THE DECREE IN MATTHEWS V. MARSHALL, ET AL., DORFOLK SUP. CT., NO. 1998-DUCV-6041. SEE EXHIBIT E TO SAY THE LEGAL DOCUMENTS CONSTITUTE A PUBLICATION FILES IN THE FACE OF THE LAW AND ITS MANDATES.

LEGAL MAIL IS LEGAL MAIL, WHETHER IF ITS SENT "PRIVILEGED MAIL" FROM AN ATTORNEY, COURT, OR OFFICER OF THE COURT, OR FROM A THIRD PARTY CITIZEN. THERE IS NO CONVICTION HERE AND THE DEFENDANTS CANNOT PLAY IGNORANT TO THIS FACT. THIS IS WHY THE DOC NEVER IMPERED

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WITH ANY LEGAL MAIL SENT INTO THE FACILITY. THE POLICY OF FIVE PAGES PER PUBLICATION ONLY PERTAINS TO COPIES OF INTERNET PUBLICATIONS BEING MAILED IN. SEE GUZZI V. DENNEHY, 25 MASS. LI REP. 207 (2009) (WHERE IT HELD THE DOC CHANGED ITS POLICY SO AS TO PERMIT PRISONERS TO RECEIVE UP TO FIVE PAGES PER DAY OF EXTRACTS FROM INTERNET PUBLICATIONS THROUGH THE MAIL).

IN DEFENDANT LYNCH'S INTERROGATORIES RESPONSE CONCERNING THIS SUBJECT MATTER, HE STATES THAT THE LEGAL MAIL WAS SEIZED PURSUANT TO 103 CMR 481, INMATE MAIL, EXHIBIT B, AT P. 2. HE WOULD NOT RESPOND TO THE QUESTION IF HE WAS AWARE THAT LEGAL MAIL IS PROTECTED SPEECH UNDER THE FIRST AMENDMENT. Id. AT P. 3. HE ALSO ANSWERS THAT 103 CMR 481, INMATE MAIL, 103 CMR 403, INMATE PROPERTY, AND 103 CMR 430, INMATE DISCIPLINE, GRANTS HIM TO WITHHOLD LEGAL MAIL FROM A THIRD PARTY ENTERING THE FACILITY. Id.

THE RATIONALE OF THE DEFENDANTS ARE THAT BECAUSE THE LEGAL DOCUMENTS WERE PHOTO-

COPIED AND MAILED IN, THAT THEY WERE BEING TREATED AS "PUBLICATIONS" IS A BLATANT ABUSE OF AUTHORITY AND REGULATORY POWERS. THIS FIVE PAGE LIMIT ONLY PERTAINS TO PHOTOCOPIED INTERNET DOCUMENTS, AND FOR NOTHING ELSE. THE REGULATION DEFINITION OF WHAT A PUBLICATION IS IS AS FOLLOWS:

"PUBLICATION - ANY BOOK, BOOKLET, PAMPHLET, MAGAZINE, PERIODICAL, NEWSLETTER, NEWSPAPER, OR SIMILAR DOCUMENT, INCLUDING STATIONARY AND GREETING CARDS, PUBLISHED BY ANY INDIVIDUAL, ORGANIZATION, COMPANY, OR CORPORATION WHICH IS DISTRIBUTED OR MADE AVAILABLE THROUGH ANY MEANS OR MEDIA FOR A COMMERCIAL PURPOSE. THIS DEFINITION INCLUDES ANY PORTION EXTRACTED, PHOTOCOPIED, OR CLIPPED FROM SUCH ITEMS." 103 CMR 481.06.

SEE ROYCE V. COMMISSIONER OF CORRECTION, 390 MASS. 425, 427-428 (1982) ("ONCE AN AGENCY HAS SEEN FIT TO PROMULGATE REGULATIONS, IT MUST COMPLY WITH THOSE REGULATIONS"). IN THIS CASE THE DEFENDANTS ARE DELIBERATELY FAILING TO COMPLY WITH THE PUBLICATION SECTION OF THE REGULATION, SOPA,

THE DEFENDANTS CONTINUOUSLY REFER TO 103 CMR 403, INMATE PROPERTY POLICY AS AUTHORIZING THEM TO WITHHOLD THE CARD, LEGAL MAIL, ETC. LOOKING AT THE PROPERTY REGULATION, THERE IS NOTHING WITHIN THAT REGULATION CONCERNING THE SUBJECT MATTER AT HAND IN THIS COMPLAINT. THEREFORE, THAT REGULATION, AS SUGGESTED BY THE DEFENDANTS, DOES NOT APPLY TO THE FACTS OF THIS CASE. WHAT DOES APPLY TO THIS CASE ARE THE MAIL REGULATIONS, AND THE MAIL REGULATIONS GRANTS NO SUCH AUTHORITY TO THE DEFENDANTS. IT IS APPARENT FROM THIS RECORD THAT THIS IS AN UNCONSTITUTIONAL SUPPRESSION OF SPEECH.

IN TURNER V. SAFLEY, 482 US: 78 (1987), THE UNITED STATES SUPREME COURT HELD THAT "PRISON WALLS DO NOT FORM A BARRIER SEPARATING PRISON INMATES FROM THE PROTECTIONS OF THE CONSTITUTION," Id. AT 84 (EMPHASIS ADDED). IN DOING SO, THE COURT OUTLINED CRITERIAS TO BE FOLLOWED, 1) THERE

MUST BE A "VALID, RATIONAL CONNECTION" BETWEEN THE PRISON REGULATION AND THE LEGITIMATE GOVERNMENTAL INTEREST PUT FORWARD TO JUSTIFY IT, 2) WHETHER THERE ARE ALTERNATIVES MEANS OF EXERCISING THE RIGHT THAT REMAIN OPEN TO PRISON INMATES, 3) THE IMPACT ACCOMMODATION OF THE ASSERTED CONSTITUTIONAL RIGHT WILL HAVE ON GUARDS AND OTHER INMATES, AND ON THE ALLOCATION OF PRISON RESOURCES GENERALLY, AND 4) THE ABSENCE OF READY ALTERNATIVES IS EVIDENCE OF THE REASONABLENESS OF A PRISON REGULATION. *Id.* AT 90.

LOOKING AT THE FACTS OF THIS CASE AND WHAT TURNER V. SAFFLEY REQUIRES TO SHOW THE DEFENDANTS MEET THE EXCEPTIONS TO VIOLATE GASKING'S FIRST AMENDMENT RIGHTS, HAS NOT BEEN SHOWN HERE. FIRST, THERE IS NO "VALID, RATIONAL CONNECTION" BETWEEN THE PRISON POLICY (NOT REGULATION), AND THE INTEREST PUT FORWARD TO JUSTIFY IT.

THE RESPONSE STATES THAT IT VIOLATES PRISON
POLICY, NOT POINTING TO GOOD VALUE SECURITY
CONCERN THAT "MAY" JUSTIFY IT. AND, AS FAR
AS THE SO-CALLED "GLITTER" POLICY GOES,
IT DOES NOT EXIST. IT IS A MADE UP ACTION
BY APPARENTLY THE SUPERINTENDENT, AND
MAYBE THE COMMISSIONER, WHO IS NOW
THE SECRETARY OF PUBLIC SAFETY. IT IS
A "DIRECTIVE" AS NOTED BY THE DEFENDANTS
RESPONSE TO THE PLAINTIFF'S GRIEVANCES.
SEE EXHIBIT G.

THE NEXT THING IS THAT THE "DIRECTIVE"
IS NOT REASONABLY RELATED TO A LEGITIMATE
GOVERNMENTAL INTEREST, AND SUCH RESTRI-
CTIONS PLACED ON THE MAIL DOES NOT MEET
THE REASONABLENESS STANDARD OF JURNEK
V. JAFFE, SOPEA. THIS DISAPPROVAL OF IN-
COMING MAIL MUST BE DONE ON A CASE-BY-
CASE BASIS, NOT IN A BLANKET POLICY BAN AS
IS THE CASE HERE. SEE 103 COR 481, 18(2)(a)-(h).
THEREFORE, THE DEFENDANTS ACTIONS HERE
ARE NOT REASONABLE AND FAILS THE SECOND

TEST OF TURNER V. SAFFLEY, SUPRA. THE THIRD FACTOR IS THE IMPACT ACCOMMODATION OF THE ASSERTED CONSTITUTIONAL RIGHT, I.E., FIRST AMENDMENT AND ARTICLE 16 OF THE MASSACHUSETTS DECLARATION OF RIGHTS, WILL HAVE ON GUARDS OR OTHER INMATES, AND THE ALLOCATION OF PRISON RESOURCES GENERALLY. FIRST THE ALLOCATION OF PRISON RESOURCES HAS FUNDAMENTALLY INCREASED DUE TO THE CONSTANT SCREENING OF ALL INCOMING MAIL THAT IS BEING SEIZED WRONGFULLY AND UNLAWFULLY BY THE DEFENDANTS UNDER THE GUISE OF "JUST BECAUSE," AND THE DEFENDANTS NOT SEIZING THE MAIL CONTRARY TO THE REGULATIONS, WILL HAVE NO RAMIFICATIONS ON THE LIBERTY OF OTHERS. OR ON THE USE OF PRISON'S LIMITED RESOURCES FOR PRESERVING INSTITUTIONAL ORDER.

THERE WOULD BE NO "RIPPLE EFFECT" IF THE DEFENDANTS WERE MANDATED TO STOP THIS PRACTICE RECENTLY IMPLEMENTED. THIS IS MORE OF A BURDEN ON THE INMATES

THAN STAFF BECAUSE ITS DEPRIVING PRISONERS OF DOCUMENTS NOT DEEMED A THREAT TO ENTER, AND THAT IS BORNE OUT IN CO-PLAINTIFF'S LETTER, AT EXHIBIT E, WHERE THE DEFENDANTS ONLY GAVE HIM FIVE PAGES OF AN INJUNCTION MOTION MAILED BY GASKINS TO HIM. IS THAT A PUBLICATION? THE DEFENDANT CAN MAKE OUT NO REASONABLE JUSTIFICATION FOR INTERFERING WITH PLAINTIFF'S ACCESS TO THE COURTS. THAT IS WHAT ALL OF THE WITHHELD LEGAL DOCUMENTS ENTAILS, INTERFERING WITH COURT ACCESS. MOREOVER, THE ONLY SITUATION HERE WHERE THE ABSENCE OF A READY ALTERNATIVE APPLIES IS THE "GLITTER" POLICY/DIRECTIVE. IN A SITUATION AS SUCH, THE ALTERNATIVE IS THAT THE GLITTER CAN BE TESTED IF ITS BELIEVED THAT IT MAY CONTAIN CONTRABAND IN IT. THE REGULATION PERMITS SUCH DISCRETION. TO DATE, THERE HAS BEEN NO EVIDENCE PRODUCED BY THE DEFENDANTS TO JUSTIFY SUCH A DIRECTIVE AND/OR POLICY. AND THE

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AFFIDAVITS SUBMITTED BY COUNSEL ARE "IPSE DIXIT," AND SUPPORTS NOTHING CON-
CRETELY OF THE DEFENDANTS ASSERTIONS.
THIS CASE-BY-CASE TESTING FULLY ACCORD-
MODATES THE PRISONERS RIGHTS AT A
DEMINIMIS COST TO VALUABLE PENOLOGICAL
INTERESTS, AS WELL AS CUTDOWN ON VIOLA-
TIONS OF FIRST AMENDMENT AND ARTICLE
18 PROTECTIONS AFFORDED PRISONERS
WITHIN THE DEPARTMENT OF CORRECTIONS.

HERE, THE PRISON OFFICIALS HAVE SUB-
STANTIALLY BURDENED THE PLAINTIFF ON
THE FREE EXERCISE OF RECEIVING LEGAL
MAIL, LEGAL DOCUMENTS, CARDS AND BROCHURES
FROM OUTSIDE SOURCES. ALLOWING MR. GASKINS
TO CONTINUE RECEIVING THIS INFORMATION
WITHOUT INTERFERENCE, WOULD NOT UNDULY
BORDEN THE DEFENDANTS SO-CALLED INTER-
EST. SEE RASHEED V. COMMISSIONER OF
CORRECTION, 446 MASS. 463, 467 (2006) (IF
SUCH BURDEN EXISTS, THE PRISON MUST SHOW
THAT "1) IT HAS AN INTEREST SUFFICIENTLY

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COMPELLING TO JUSTIFY THAT BURDEN AND
2) THE GRANTING OF AN EXEMPTION TO
PERSONS IN [THE INMATES] POSITION
WOULD UNDOLY BURDEN THAT INTEREST".
THIS STANDARD HAS NOT BEEN MET HERE
BY THE DEFENDANTS AS WELL.

III. PLAINTIFF WAS DENIED DUE PROCESS.

THE DUE PROCESS CLAUSE PROHIBIT PRISON OFFICIALS FROM DEPRIVING PLAINTIFF OF "LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW. U.S. CONST. AMEND. XIV. SUBSTANTIVE DUE PROCESS IS WHAT THE PLAINTIFF. THAT IS SO BECAUSE "SUBSTANTIVE DUE PROCESS", REFERS TO THE PROTECTIONS OF THE FIRST, FOURTH, SIXTH AND EIGHTH AMENDMENTS. SEE FUNDILLER V. CITY OF COOPER CITY, 772 F.2d 1436, 1440 (11th CIR. 1985). THAT IS BECAUSE THESE AMENDMENTS INITIALLY APPLIED ONLY TO THE FEDERAL GOVERNMENT. THEY NOW APPLY TO THE STATES BECAUSE THEY ARE CONSIDERED TO BE "INCORPORATED" IN

THE FOURTEENTH AMENDMENT'S DUE PROCESS CLAUSE, WHICH DOES APPLY TO THE STATES. SEE DOUGLAS V. LOUISIANA, 391 U.S. 145, 147-148 (1968).

IN 103 CMR 481.08, IT STATES: "EXCEPT AS PROVIDED IN 103 CMR 481.09, THERE SHALL BE NO LIMITATION PLACED ON THE NUMBER OF PERSONS WITH WHOM AN INMATE MAY CORRESPOND, NOR SHALL THERE BE ANY LIMITATION ON THE NUMBER OF LETTERS AN INMATE MAY SEND OR RECEIVE."

IN 103 CMR 481.13(1) INCUMBING CORRESPONDENCE, IT STATES: "IT IS THE POLICY OF THE MASSACHUSETTS DEPARTMENT OF CORRECTION NOT TO READ, CENSOR, OR DISAPPROVE INCOMING CORRESPONDENCE, EXCEPT WHERE NECESSARY TO PROTECT LEGITIMATE GOVERNMENTAL INTERESTS."

THE DEFENDANT'S DISCRETION IS LIMITED. SEE KENTUCKY DEPT. OF CORRECTION V. THOMSON,

490 U.S. 454, 460 (1989).

Before such deprivation, due process was required.

IV. DEFENDANTS ARE NOT ENTITLED

TO QUALIFIED IMMUNITY.

IN EVALUATING A CLAIM OF QUALIFIED IMMUNITY, [A] JUDGE MUST FIRST DECIDE WHETHER, "TAKEN IN THE LIGHT MOST FAVORABLE TO THE PARTY ASSERTING THE INJURY . . . THE FACTS ALLEGED SHOW THE OFFICER'S CONDUCT VIOLATED A CONSTITUTIONAL RIGHT."

GUTIERREZ V. MARIANO, MAY TRANS. AUTHORITY, 437
MAS. 396, 404 (2002) QUOTING DAVIES V. KATZ,
533 U.S. 194, 200-201 (2001) (EMPHASIS ADDED).
TO OVERCOME A CLAIM OF QUALIFIED IMMUNITY,
A PLAINTIFF MUST SHOW THAT THE STATE
OFFICIAL DIRECTLY PARTICIPATED IN VIOLATING
A RIGHT OF THE PLAINTIFF THAT IS "CLEARLY
ESTABLISHED." PEREIRA V. COMMISSIONER
OF SOC. SERVS, 432 MAS. 251, 265 (2000),

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CITING ANDERSON V. CREIGHTON, 483 U.S. 635, 640 (1987) (RIGHT MUST BE CLEARLY ESTABLISHED SO THAT A "REASONABLE OFFICIAL" WOULD UNDERSTAND THAT HER ACTIONS VIOLATE THE RIGHTS).

EVERY VIOLATION LISTED WITHIN THE PLAINTIFF'S COMPLAINT WAS "CLEARLY ESTABLISHED" BEFORE AND DURING THE VIOLATIONS THE PLAINTIFF COMPLAINED DEFENDANTS BEING IN VIOLATION. MR. GRASINS HAD A LIBERTY INTEREST IN THE CENSORSHIP OF HIS MAIL. SEE PROCTOR V. MARTINEZ, 416 U.S. 396, 417-19 (1974), AND PRISONERS ARE ENTITLED TO DUE PROCESS PROTECTIONS IN THIS INSTANCE.

THE VIOLATIONS LISTED IN THE COMPLAINT HAVE BEEN CLEARLY ESTABLISHED SINCE, AT LEAST, 1974. A "REASONABLE OFFICIAL" SUCH AS THE DEFENDANTS WERE WELL AWARE OF THE RIGHTS THEY ARE IN VIOLATION OF, AND

QUALIFIED IMMUNITY IS INAPPROPRIATE FOR
THE DEFENDANTS AND SHOULD BE DENIED.

CONCLUSION

FOR THE REASONS STATED HEREIN,
THE DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT, SHOULD BE DENIED.

RESPECTFULLY SUBMITTED,

DATED:

TONY B. GASKINS, PRO SE
S.B.C.C.

P.O. BOX 8000
SHIRLEY, MA. 01964

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
DOCKET NO. 1885CV00554A

TONY GASKINS
Plaintiff

v.

STEVEN A. SILVA, et al.,
Defendants

MEMORANDUM OF DECISION AND ORDER ON
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (DOCKET P.# 42)

The plaintiff filed this complaint against prison officials whom he claims violated his state and federal constitutional rights via the seizure of some of his incoming mail as contraband. At issue is whether the claims survive judicial review.¹

The plaintiff is correct that "a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." Pell v. Procunier, 417 U.S. 817, 822 (1974).

"However, 'simply because prison inmates retain certain constitutional rights does not mean that these rights are not subject to restrictions and limitations. . . . The fact of confinement as well as the legitimate goals and policies of the penal institution limits these retained

¹ The parties proceeded to summary judgment at the court's request. The issue cast in this motion would be whether the plaintiff can prove essential element(s) of his civil rights claims. Kourouvacilis v. General Motors Corp., 410 Mass. 706, 711 (1991). ("A complete failure of proof concerning an essential element of the non-moving party's case renders all other facts immaterial"). Since the complaint seeks declaratory relief and injunctive relief as well as damages, it may be viewed as one in the nature of certiorari pursuant to G.L.c. 249, 4 even when the complaint does not mention that statute or use the word "certiorari." See, e.g., Murphy v. Superintendent, M.C.I., Cedar Junction, 396 Mass. 830, 833 (1986). Regardless, this case turns on legal interpretations and not genuine issues of material fact; the standard on summary judgment is at least as favorable to the plaintiff, as the non-moving party.

Entered & Copies mailed 8/19/20

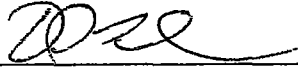
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constitutional rights. . . . Accordingly, we have held that even when an institutional restriction infringes a specific constitutional guarantee, such as the First Amendment, the practice must be evaluated in the light of the central objective of prison administration, safeguarding institutional security.' . . . Prison administrators are therefore 'accorded wide-ranging deference' in the 'adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.' Champagne v. Commissioner of Correction, 395 Mass. 382, 387 (1985) [internal citations omitted]. "Specifically, the Supreme Court directs that, 'when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.'" Commonwealth v. Jessup, 471 Mass. 121, 130-131 (2015) quoting Turner v. Safley, 482 U.S. 78, 84 (1987).

In this case I find that the prison's interpretation and implementation of the regulations (103 CMR 481 et seq.) as to "privileged mail" and "non-privileged correspondence/publications" was reasonable and passes muster under the various factors mandated by Turner, *id.* In contrast, the plaintiff's interpretation that "legal mail is legal mail" is not in keeping with 103 CMR 481.10 that defines privileged mail in reference to the sender. Also, the plaintiff's stance with regard to the use of glitter ignores the prison's legitimate interest in prohibiting drug contraband from entering the facility. Accordingly, the plaintiff has not shown on this record that the defendants have illegally infringed upon his constitutional rights, and his claims therefore fail.

ORDER

For the reasons stated, the Defendants' Motion for Summary Judgment is ALLOWED.



David Ricciardone, Superior Court Justice

Dated: August 18, 2020

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

Superior Court
No. 1885CV00554-A

Tony B. Gaskins,
Plaintiff,

v.

Steven Silva As Superintendent Of
Souza Baranowski Correctional Center, et al.,
Defendants.

FILED

SEP 04 2020

ATTEST:

Del M. H. CLERK

NOTICE OF APPEAL

The Plaintiff, Tony Gaskins, appeals the decision of Ricciardone, J. on 8/18/20 granting Defendants' Motion For Summary Judgment.

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Respectfully Submitted,

Tony B. Gaskins
Tony B. Gaskins, pro se
SBCC
P.O. Box 8000
Shirley, Ma. 01464

Dated: 8/24/20

CERTIFICATE OF SERVICE

I, Tony B. Gaskins, certify that I caused a true copy of the foregoing "Notice of Appeal," to be served upon, Heidi D. Handler, Esq., Department of Correction, Legal Division, 70 Franklin Street, Suite 600, Boston, Ma. 02110-1327, by first class mail, postage prepaid.

Tony B. Gaskins
Tony B. Gaskins, pro se

Dated: 8/24/20

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103 CMR 481.00: INMATE MAIL

Section

- 481.01: Purpose
- 481.02: Cancellation
- 481.03: Applicability
- 481.04: Access to Regulation
- 481.05: Definitions
- 481.06: Institutional Procedures
- 481.07: Collection and Distribution of Mail
- 481.08: Amount of Mail
- 481.09: Free Postage for Indigent Inmates
- 481.10: Privileged Mail
- 481.11: Identification and Processing of Privileged Mail
- 481.12: Inspection of Non-privileged Correspondence and Packages
- 481.13: Reading/Censoring/Disapproval of Incoming Non-privileged Correspondence/Publications
- 481.14: Reading/Disapproval of Outgoing Non-privileged Correspondence/Publications
- 481.15: Procedural Requirements for Disapproval of Incoming Correspondence/Publications
- 481.16: Procedural Requirements for Disapproval of Outgoing Mail
- 481.17: Return Address on Outgoing Mail
- 481.18: COD Mail Prohibited
- 481.19: Prohibited Correspondence
- 481.20: Prohibition on Inmate-to-inmate Correspondence
- 481.21: Forwarding Mail
- 481.22: Time Limits
- 481.23: Emergencies
- 481.24: Responsible Staff
- 481.25: Annual Review
- 481.26: Severability Clause

481.01: Purpose

The purpose of 103 CMR 481.00 is to establish rules governing the sending and receiving of mail by inmates confined in state correctional institutions. The Department recognizes the importance of the use of mail by inmates to maintain appropriate contact with the community.

481.02: Cancellation

103 CMR 481.00 cancels all previous Departmental and institutional policy statements, bulletins, directives, orders, notices, rules or regulations regarding inmate mail or correspondence, which are inconsistent with 103 CMR 481.00.

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481.03: Applicability

103 CMR 481.00 is applicable to all employees and inmates at all state correctional institutions within the Department of Correction.

481.04: Access to Regulation

103 CMR 481.00 shall be maintained within the Central Policy File of the Department and shall be accessible to all Department employees. A copy of 103 CMR 481.00 shall also be maintained in each Superintendent's Central Policy File and at each inmate library.

481.05: Definitions

Commissioner. The chief executive officer of the Department of Correction.

Court Official. A judge, court or an employee of a court of the United States or of the Commonwealth of Massachusetts, or an attorney employed by a state or federal governmental agency.

Deputy Superintendent. A deputy administrative officer of a state correctional institution.

Indigent Inmate. Upon request for waiver of fees or cost, an inmate may be declared indigent if:

(a) At the time of the request, the inmate has, in all accounts to which he or she has access, a total amount less than or equal to \$10.00 plus the cost or fees sought to be waived; and

(b) At no time for the 60 days immediately preceding said request, have the inmate's accounts contained more than \$10.00 plus the cost or fees sought to be waived. (e.g. request to waiver \$5.00 on July 1, 2015; indigent if, at no time since May 1, 2015, total in accounts has been more than \$15.00).

In addition to 103 CMR 481.05: Indigent Inmate(a) or (b), the Superintendent may in his or her discretion, designate an inmate as indigent if the inmate has less than \$2.00 in his or her account at the time of the request, or in other circumstances as he or she deems appropriate.

Inmate. For the purposes of 103 CMR 481.00 only, an individual, whether in pre-trial, un-sentenced, or sentenced status, who is confined in a correctional institution, including those individuals admitted for evaluation or commitment to the Bridgewater State Hospital, at the Massachusetts Treatment Center or at the Massachusetts Alcohol and Substance Abuse Center.

Mail Officer. The employee at a correctional institution whose duties include the processing of mail.

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Nudity. A pictorial depiction where genitalia, buttocks or female breasts are exposed. Publications containing nudity illustrative of medical, educational, or anthropological content may be excluded from this definition.

Publication. Any book, booklet, pamphlet, magazine, periodical, newsletter, newspaper, or similar document, including stationery and greeting cards, published by any individual, organization, company, or corporation which is distributed or made available through any means or media for a commercial purpose. Publication includes any portion extracted, photocopied, or clipped from such items, provided, however, that an inmate may receive a maximum of five pages per day, except Sundays and postal holidays, of a portion extracted, photocopied, or clipped from such items as an attachment to personal correspondence as long as the material is not prohibited by 103 CMR 481.00.

Sexually Explicit. A pictorial depiction of actual or simulated sexual acts including sexual intercourse, anal or oral sex, or masturbation or material which promotes itself based upon such depictions on a routine or regular basis or in individual one-time issues.

Superintendent. The chief administrative officer of a state correctional institution.

481.06 Institutional Procedures

The Superintendent at each correctional institution shall develop written institutional policies designed to implement 103 CMR 481.00. Institutional policies regarding mail shall conform to the requirements set forth in 103 CMR 481.00 and shall be subject to the approval of the Commissioner or a designee.

481.07 Collection and Distribution of Mail

(1) Outgoing mail shall be collected directly from a locked mail box by a Department of Correction (Department or DOC) employee, in accordance with an established schedule, at least once each day, except Sundays and postal holidays. Prior to outgoing mail being placed in the locked mailbox, staff shall verify that the inmate depositing mail into the box is in fact the inmate whose name and return address appear on the envelope and that the envelope is sealed.

All outgoing mail shall be stamped on the reverse side of the envelope with language indicating that the correspondence is sent from a correctional institution. Mail shall be stamped in blue ink only; the stamp shall read as follows:

"This correspondence is forwarded from a Massachusetts Correctional Institution. The contents may not have been evaluated and the Department of Correction is not responsible for the substance or content of the enclosed material. If you have received unwanted correspondence from this inmate, call 1-866-684-2846 to stop

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future correspondence."

At no time shall outgoing mail be collected or otherwise handled by an inmate. All outgoing mail, including inter and intra-office mail, shall be processed through the institutional mailroom.

(2) Incoming mail shall be distributed directly to the receiving inmates by a DOC employee in accordance with an established schedule, at least once every day except Sundays and postal holidays, unless an article of mail is held pursuant to the provisions of 103 CMR 481.15 and 481.16. At no time shall incoming mail be distributed or otherwise handled by an inmate nor shall mail be left by the distributing employee in a commonly accessible place. Nothing in 103 CMR 481.00 shall limit the right of a Superintendent to withhold delivery of publications from an inmate serving disciplinary detention time until the completion of said detention time.

(3) Outgoing mail shall be collected from the inmates and delivered to the post office, and incoming mail shall be picked up from the post office and delivered to the inmates, within 24 hours of collection, except when an article of mail is held pursuant to the provisions of 103 CMR 481.14 and 481.15.

481.08: Amount of Mail

Except as provided in 103 CMR 481.09, there shall be no limitation placed on the number of persons with whom an inmate may correspond, nor shall there be any limitation on the number of letters an inmate may send or receive.

481.09: Free Postage for Indigent Inmates

Indigent inmates shall be permitted to mail three letters first class weighing one ounce or less each week at institution expense. In addition, an indigent inmate shall be permitted, where necessary, to send an unlimited number of letters of any weight to any court official at institution expense. A charge shall not be placed against future deposits to an inmate's account for the cost of postage and materials supplied in accordance with 103 CMR 481.10.

481.10: Privileged Mail

(1) Inmates shall be permitted to mail to and receive letters from the following persons in accordance with the procedures set forth in 103 CMR 481.12:

(a) Any officer of a court of the United States, of the Commonwealth of Massachusetts, or of any court of any state of the United States (e.g., judge, government attorney, court clerk, parole board members, probation or parole officers);

(b) The President or Vice President of the United States or the Governor of the Commonwealth of Massachusetts;

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- (c) Any member of the Congress of the United States or any member (e.g., legislator) of the General Court of the Commonwealth of Massachusetts;
- (d) The Attorney General of the United States or the Attorney General of the Commonwealth of Massachusetts;
- (e) The Director or any agent of the Federal Bureau of Investigation; and
- (f) The Superintendent of the state correctional institution in which the inmate is confined, an Assistant Deputy Commissioner or Deputy Commissioner of Correction, or the Commissioner of the Massachusetts Department of Correction;

(2) Inmates and persons with whom inmates may correspond as provided in 103 CMR 481.10(1) shall not use or permit others to use authorized privileged mail for personal, non-legal or non-official correspondence, the transmission of contraband, or the transmittal of communications to be given or forwarded to persons not specified in 103 CMR 481.10(1). Persons receiving unauthorized privileged mail, correspondence intended for a party other than the addressee, or letters or packages for forwarding, shall submit such communications or materials to the Superintendent of the institution in which the inmate is confined. Inmates who fail to submit such communications or materials to the Superintendent shall be subjected to disciplinary action.

(3) Attorneys shall be allowed to provide self-addressed, meter-stamped envelopes to their inmate clients. The envelope should be addressed to the law firm or to the individual attorney, contain only a meter-stamp (not a postage stamp) and may not be altered in any way. Should an inmate alter or attempt to utilize the meter-stamped envelope to send mail to anyone other than the original addressee, a disciplinary report shall be issued.

481.11: Identification and Processing of Privileged Mail

(1) Outgoing privileged mail shall not be opened for inspection or any other purpose or otherwise impeded in its transmission, if it meets the following requirements:

- (a) it is addressed to a person listed in 103 CMR 481.10(1);
- (b) it includes on the outside of the envelope the inmate's name and return address, including the name of the correctional institution it is being sent from;
- (c) it has been marked by the institution to indicate to the addressee that it has not been inspected or opened;
- (d) it successfully passes a fluoroscope examination for contraband material if mailed from a medium or maximum security level facility, or, if mailed from a minimum or pre-release security level facility, it successfully passes a fluoroscope examination for contraband material when requested by the Superintendent and approved by the Commissioner.

(2) Outgoing privileged mail that does not successfully pass a fluoroscope examination shall be processed as follows:

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- (a) the inmate whose name appears on the return address shall be notified of the unsuccessful fluoroscope examination of the correspondence or package;
 - (b) if the inmate acknowledges that he or she is the sender of the correspondence or package, he or she will be asked to open the correspondence or package for inspection;
 - (c) if an inmate refuses to open such correspondence or package for inspection upon request, the addressee's permission to open and inspect the package will be sought unless circumstances require the matter to be referred to the appropriate law enforcement agency by the Superintendent (e.g., U.S. Postal Service, State Police, Federal Bureau of Investigation, District Attorney) for handling as appropriate, and the Commissioner shall be notified.
- (3) Incoming privileged mail may be required to successfully pass a fluoroscope examination for contraband material but shall not be opened by a DOC employee except in the presence of the addressee inmate and for the sole purpose of ascertaining that its contents are free of contraband. The purpose of the inspection will be to receive and receipt any funds enclosed for the inmate, to verify and record the receipt of permitted personal property, and to prevent the transmission of contraband to the inmate. The processing of funds, permitted personal property and contraband found in mail shall be in accordance with 103 CMR 403.00: *Inmate Property* and 481.00.

481.12: Inspection of Non-privileged Correspondence and Packages

- (1) All outgoing, non-privileged correspondence and packages being sent from a maximum or medium security level facility shall be required to successfully pass a fluoroscope examination for contraband materials. All outgoing non-privileged correspondence and packages being sent from a minimum or pre-release security level facility may be required to successfully pass a fluoroscope examination for contraband materials when requested by the Superintendent and approved by the Commissioner. The opening and inspection of outgoing non-privileged mail and packages at all security level facilities shall be at the discretion of the Superintendent to prevent the transmission of materials and/or information which represents a threat to security, order, rehabilitation or public safety, or appears to contain material not addressed to the addressee, but rather, material intended for other parties.
- (2) All incoming non-privileged correspondence and packages may be required to successfully pass a fluoroscope examination for contraband materials, and shall be opened and inspected before delivery to the inmate. The purpose of inspection will be to receive and receipt any funds enclosed for the inmate; to verify and record the receipt of permitted personal property; and to prevent the transmission of contraband to the inmate. If there is reason to believe contraband is being introduced through the mail based on the paper color, texture, etc., a photocopy of the original correspondence rather than the original correspondence may be forwarded to the inmate. The processing of funds, permitted personal property and contraband found in

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correspondence shall be in accordance with 103 CMR 403.00: *Inmate Property*.

(3) Notice shall be sent to the sender and the addressee, for both outgoing and incoming mail, whenever contraband is confiscated, provided that the address is known. Such notice shall satisfy the requirements of 103 CMR 481.15 and 481.16. Any money order confiscated as contraband shall be processed pursuant to 103 CMR 403.17(B) —

481.13: Reading/Censoring/Disapproval of Incoming, Non-privileged Correspondence/Publications

(1) Incoming Correspondence. It is the policy of the Massachusetts Department of Correction not to read, censor, or disapprove incoming correspondence, except where necessary to protect legitimate governmental interests.

(2) The Superintendent may authorize the reading, censoring or disapproval of ~~incoming non-privileged correspondence only to prevent interference with~~ institutional goals of security, order, discipline, or if the correspondence might facilitate, encourage, or instruct in, criminal activity. Disapproval of incoming, non-privileged correspondence shall not be based upon an employee's personal views about the correspondence. The Deputy Superintendent or his or her designee may disapprove receipt by an inmate of non-privileged correspondence, the contents of which fall as a whole or in significant part into any one of the following categories:

- (a) The correspondence contains depictions or descriptions of procedures for the construction or use of weapons, ammunition, bombs or incendiary devices;
- (b) The correspondence contains depictions, descriptions or encouragement of methods of escape from correctional facilities, or contains blueprints, drawings or similar descriptions of any correctional institution within the Commonwealth;
- (c) The correspondence contains depictions or descriptions of procedures for the brewing of alcoholic beverages, or the manufacture of drugs;
- (d) The correspondence is written, in whole or in part, in code;
- (e) The correspondence contains depictions, descriptions or encouragement of activities that may lead to the use of physical violence or group disruption;
- (f) The correspondence contains encouragements or instructions in the commission of criminal activity;
- (g) The correspondence contains sexually explicit pictorial material or material which features nudity which, by its nature or content, poses a threat to the security, good order, or discipline of the institution.
- (h) The correspondence facilitates the introduction of contraband drugs, etc.

(3) Incoming Publications.

(a) The Deputy Superintendent may reject a publication within a reasonable time of receipt to prevent interference with institutional goals of security, order, rehabilitation, or if the publication facilitates, encourages, and/or instructs in criminal activity. The Deputy Superintendent may not reject a publication solely because its content is religious, philosophical, political, social, or because its

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content is unpopular or repugnant. Publications which may be rejected by a

Deputy Superintendent include, but are not limited to, publications which fall within one of the categories listed in 103 CMR 481.14(2)(a) through (h). An inmate may not receive more than one copy of a particular issue of a publication.

(b) Publications may be excluded solely because they contain sexually explicit material or feature nudity as defined in 103 CMR 481.05. In addition, the Deputy Superintendent of the Treatment Center, with the approval of the Commissioner, may exclude additional types of material that may interfere with the treatment and rehabilitation process at that institution.

(c) It is the Deputy Superintendent's decision as to whether or not a publication should be excluded.

(d) Sexually explicit material does not include material of a news or information type, or material illustrative of medical, educational, or anthropological content.

(e) Deputy Superintendents may not establish an excluded list of publications. Deputy Superintendents should review each issue of a subscription publication prior to rejection of the issue. Rejection of several issues of a subscription publication is not sufficient reason to reject the subscription in its entirety.

(f) Where a publication is rejected, the procedural requirements of 103 CMR 481.15 shall be followed. The notice required by 103 CMR 481.15 shall contain reference to the specific article(s) or material(s) considered objectionable.

481.14: Reading/Disapproval of Outgoing Non-privileged Correspondence/Publications

It is the policy of the Massachusetts Department of Correction not to read or censor outgoing mail, except where necessary to protect legitimate governmental interests.

(1) The Superintendent may authorize the reading of outgoing non-privileged correspondence when in his or her opinion such action is necessary to prevent the transmission of materials and/or information which represents a threat to security, order, rehabilitation or to the public safety.

(2) For outgoing mail, such authorization may be granted when the Superintendent has received specific information that a particular inmate's mail contains information which may jeopardize institutional security, order, rehabilitation or the public safety. Ordinarily, such specific information shall indicate that the contents of the outgoing correspondence fall as a whole or in significant part into any one of the following categories:

(a) The correspondence contains a transmittal of plans for escape or to introduce contraband into the prison;

(b) The correspondence contains plans for criminal activity or any activity which violates any Departmental or institutional rule, regulation, order or policy;

(c) The correspondence is written, in whole or in part, in code;

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- (d) The correspondence contains threatening or harassing language or material, including sexually explicit material, intended for unwilling recipients;
- (e) The correspondence contains or appears to contain unsanitary or hazardous material (*e.g.* feces, insects, dirt, debris);
- (f) The correspondence contains an extortion demand(s);
- (g) The correspondence contains cash, drugs, jewelry or other contraband for transmittal outside the prison;
- (h) The correspondence is addressed to a recipient who has previously requested not to receive correspondence from the inmate pursuant to 103 CMR 481.19;
- (i) The correspondence has an improper or no return address; or
- (j) The correspondence contains material not intended for the addressee, but rather, material intended for other parties.

Where outgoing mail is read pursuant to 103 CMR 481.13, and prohibited information is found, the mail or relevant portion thereof may be confiscated or copied in the furtherance of an investigation. Notice of a confiscation shall be given to the inmate in accordance with 103 CMR 481.16.

- (3) No employee may read inmate mail unless authorized to do so by the Commissioner or the Superintendent.
- (4) Any employee reading inmate mail pursuant to the Commissioner's or Superintendent's authorization shall record such action in a log book maintained for such purpose.

481.15: Procedural Requirements for Disapproval of Incoming Correspondence/Publications

(1) Correspondence. When any correspondence, or portion thereof, addressed to an inmate, is received at the institution, but is not delivered to the inmate for any reason set forth in 103 CMR 481.14, the inmate, and the sender when identifiable, shall be promptly notified, in writing, of the following:

- (a) the reason(s) for refusing to deliver the correspondence or a portion thereof to an inmate;
- (b) the fact that a written appeal may be submitted by the inmate or sender to the Superintendent.

(2) Publications. When any publication addressed to an inmate is received at the institution but is not delivered to an inmate for any reason set forth in 103 CMR 481.14, the inmate, and the publisher when identifiable, shall be promptly notified, in writing, of the following:

- (a) the reason(s) for refusing to deliver the publication to an inmate(s);
- (b) the fact that a written appeal may be submitted by the inmate or publisher to the Superintendent.

- (3) A single notice of rejection to the publisher from a particular institution or the

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Department shall be sufficient where more than one inmate at the institution or within the Department receives the subscription publication.

(4) The Deputy Superintendent may permit an inmate an opportunity to inspect, in the presence of correctional personnel, any disapproved material for purposes of filing an appeal unless such review may provide the inmate with information of a nature which is deemed a threat or detriment to the security, good order or discipline of the institution or which might encourage or instruct in criminal activity. An inmate has the right to appeal the disapproval to the Superintendent by submission of a written appeal within seven calendar days of receipt of the Disapproved Correspondence/Publication and Contraband Notice.

(5) The Superintendent shall, within a reasonable time from receipt of such an appeal, make a decision and notify the inmate.

(6) Where criminal activity is suspected, in addition to the foregoing procedures, the matter shall be referred to the appropriate law enforcement agency by the Superintendent (e.g., U.S. Postal Service, F.B.I., State Police, district attorney), and the Commissioner shall be promptly notified.

481.16: Procedural Requirements for Disapproval of Outgoing Mail

(1) When any mail, or a portion thereof, whether privileged or non-privileged, is not mailed either because it fails to successfully pass a fluoroscope examination or its contents fall as a whole or in significant part into any one of the categories listed in 103 CMR 481.14(2)(a) through (g), the inmate shall be promptly notified in writing of the following:

- (a) the reason for the refusal; and
- (b) notice that a written appeal may be submitted by the inmate to the Superintendent or designee.

(2) The Superintendent or designee shall, within a reasonable time of the receipt of such an appeal, make a decision and notify the inmate.

(3) Where criminal activity is suspected, in addition to the foregoing procedures, the matter shall be referred to the appropriate law enforcement agency by the Superintendent (e.g., U.S. Postal Service, F.B.I., State Police, district attorney), and the Commissioner shall be notified.

481.17: Return Address on Outgoing Mail

R.A.104

(1) It shall be the inmate's responsibility to place his or her return address on the outside of all outgoing letters or packages. The return address shall include the inmate's name and the address designated by the institution for inmate mail. Letters

481.17: continued

or packages without a return address, or where the inmate denies that he or she is the sender of outgoing correspondence bearing his or her name, will not be forwarded to the post office.

(2) In addition, all outgoing mail shall be stamped on the reverse side of the envelope with language indicating that the correspondence is sent from a correctional institution. Mail shall be stamped in blue ink only; the stamp shall read as follows:

"This correspondence is forwarded from a Massachusetts Correctional Institution. The contents may not have been evaluated and the Department of Correction is not responsible for the substance or content of the enclosed material. If you have received unwanted correspondence from this inmate, call 1-866-684-2846 to stop future correspondence."

481.18: COD Mail Prohibited

No collect-on-delivery (COD) letters or packages of any kind shall be sent or accepted for an inmate, except with the approval of the Superintendent or designee.

481.19 Prohibited Correspondence

Notwithstanding any other provisions of 103 CMR 481.00, an inmate may be prohibited by the Superintendent from corresponding with a particular person if that person, or the person's parent or legal guardian in the case of a minor, has requested in writing that such correspondence from the inmate be terminated. Whenever such correspondence is not mailed, the inmate shall be notified. Such notice shall satisfy the requirements of 103 CMR 481.16

481.20 Prohibition on Inmate-to-inmate Correspondence

An inmate may be permitted to correspond with an inmate confined in any other correctional or penal institution in the Commonwealth only if the other inmate is either a member of the inmate's immediate family or is a party in a legal action in which both inmates are parties representing themselves. The Superintendent may approve such correspondence in other exceptional circumstances, with particular regard to the nature of the relationship between the two inmates, and the security level of the institution. The following additional limitations apply:

(1) The Superintendents at both the sending and receiving institutions must approve of the correspondence;

(2) Such incoming or outgoing correspondence at institutions of all security levels may, for reasons of safety or security, be inspected and read by staff at either the sending and/or receiving institution pursuant to the authorization of the

R.A. 105

481.20: continued .

Commissioner or institution Superintendent in accordance with applicable guidelines and requirements set forth in 103 CMR 481.12, 481.13 and 441.14.

(3) When an inmate's request for inmate-to-inmate correspondence is approved by both Superintendents, a copy of the approval document(s) shall be placed in each inmate's six-part folder, and a copy shall be maintained in the mail room of both institutions.

(4) Superintendents shall develop a logging process to show approvals and disapprovals for inmate-to-inmate correspondence. Approved inmate-to-inmate correspondence shall be reviewed every 90 days.

(5) The prohibition on inmate-to-inmate correspondence applies only to Department of Correction inmates incarcerated in a Department of Correction or county facility in Massachusetts.

481.21: Forwarding Mail

(1) Mail received for an inmate who has been transferred or released from the institution where the mail is received shall be forwarded promptly, whenever possible, or returned to the sender.

(2) Change of address cards shall be readily available at each institution for issue to inmates, upon request, who are scheduled for transfer or release from the institution. Inmates shall be responsible for notifying their correspondents and the publishers of their subscriptions of any change of address.

(3) Mail for inmates who are on escape status shall have their mail marked "Return to Sender" and returned to the post office. Where appropriate, return may be delayed until such time as appropriate law enforcement officials are notified.

481.22: Time Limits

Time limits set forth in 103 CMR 481.15 and 481.16 are directory and may be modified by the Superintendent or the Commissioner, under appropriate circumstances.

481.23: Emergencies

Whenever in the opinion of the Commissioner, Deputy Commissioner or the Superintendent of a state correctional institution, an emergency exists which requires suspension of all or part of 103 CMR 481.00, he or she may order such suspension, except that any such suspension lasting beyond 48 hours must be authorized by the Commissioner.

R.A. 106

481.24: Responsible Staff

The Superintendent of each institution shall be responsible for implementing and monitoring 103 CMR 481.00.

481.25: Annual Review

103 CMR 481.00 shall be reviewed at least annually by the Commissioner or a designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the Central Policy File indicating revisions, additions or deletions which shall be included for the Commissioner's written approval and shall become effective pursuant to applicable law.

481.26: Severability Clause

If any article, section, subsection, sentence, clause or phrase of 103 CMR 481.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Commissioner or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of 103 CMR 481.00.

REGULATORY AUTHORITY

103 CMR 481.00: M.G.L. c. 124, § 1(b), 1(c), 1(q), and c. 127, § 87.

R.A. 107

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
STANDARD OPERATING PROCEDURE (SOP)
103 CMR 481 - Inmate Mail

PURPOSE: This standard operating procedure (SOP) establishes guidelines for critical operational and security changes to the 103 CMR 481 Inmate Mail, not yet codified into the 103 CMR 481. This standard operating procedure is applicable to all employees of the Department of Correction.

SECTION I. Mail Monitors

1. The Superintendent may authorize the reading or censoring of incoming and outgoing non-privileged correspondence only to prevent interference with institutional goals of security, order, discipline, or if it might facilitate, encourage or instruct in criminal activity. Authorization for reading correspondence shall never be based upon employee's personal views or for retaliation against an inmate.
2. In circumstances where staff have received specific information that jeopardize institutional security in accordance with 103 CMR 481.14(2)a-j and 481.15(2)a-g, requests authorizing reading and censorship shall be made to the Superintendent as followed:
 - (a) Staff shall submit a Request for Inmate Mail Monitor form via the security module of the Inmate Management System (IMS) to the Superintendent which will include a detailed explanation as to the reason for request in accordance with 103 CMR 481.14.2 and 481.15.2.
 - (b) The Superintendent will approve or deny said request via IMS. The monitor will expire 90 days from the date of approval.
 - (c) A one time extension may be granted by the Superintendent for monitoring beyond the 90 days contingent upon a substantial belief that the initial condition under which the mail monitor was initially approved still exists. The request for this extension will be completed via the extension tab located on the original mail monitor request form on the security module of IMS.

R.A. 108

- (d) The expectation shall be that sought information would have been acquired upon conclusion of the 90 day extension. If additional time is requested, the Superintendent shall be prudent and exercise conservative judgment when determining the necessity to continue the mail monitor. In this case, a new request via IMS will need to be initiated and approved for an additional 90 days.
3. Upon approval of a mail monitor by the Superintendent, the following recordkeeping and oversight will be established.
- (a) An approved mail monitor should not in any way delay delivery of incoming mail to the inmate or outgoing mail to the post office beyond the 24 hour period established in 103 CMR 481.08. The only exception to this time frame should be in those instances where mail is confiscated in accordance with 103 CMR 481.15 and 481.16.
 - (b) A central file shall be established and maintained by the Inner Perimeter Security. This file shall include copies of any mail that included information supporting the original request.
 - (c) An electronic log shall be maintained in the security module of IMS to be used whenever a staff member reads inmate mail pursuant to an approved mail monitor. Content of the log will include but not limited to:
 - (1) Inmate name and commitment number
 - (2) Name of staff reviewing mail and date reviewed
 - (3) Dates of monitor approval and expiration
 - (4) Type of mail, i.e. incoming/outgoing
 - (5) Name and address of sender/receiver
 - (6) Type of intelligence received
 - (7) Superintendent review
 - (d) The electronic mail monitor log shall be reviewed by the Superintendent every 90 days and documented in the mail monitor log.
4. IMS will automatically close an approved mail monitor 90 days from the date of the Superintendent's approval, if an appropriate extension was not filed and granted.

R.A. 109

SECTION II. Photocopying of Incoming Non-Privileged Inmate Mail

1. For those facilities authorized by the Commissioner, all incoming non-privileged inmate mail shall be photocopied prior to distribution to the inmate. Superintendents shall ensure that the following directives are followed:
 - (a) All inmates will receive a photocopied duplicate of authorized, non-privileged mail addressed to them. This includes the envelope.
 - (b) All inmates will receive a photocopied duplicate of authorized photographs mailed to them. Multiple pictures will be fit to a standard size copy paper.
 - (c) Staff will generally make black/white photocopies of incoming non-privileged inmate mail. Color photocopies should be utilized for incoming non-privileged mail consisting of colored or crayon drawings, color photographs/pictures and greeting cards utilizing color. Color photocopies should not be used to photocopy colored paper or envelopes, yellow lined paper, letterhead, return address labels, signatures or postmarks appearing in color. Photographs received directly from verifiable photo-printing companies do not need to be photocopied. Third party photos from photo-printing companies are not authorized and must be photocopied.
 - (d) Magazines, newspapers and publications sent directly from publishers shall not be photocopied. However any inserts, flyers and/or advertising materials included within said publication as well as any correspondence from publishers which includes all envelopes are not exempt for photocopying purposes.
 - (e) Contraband mail items such as cards with glitter shall not be copied and shall be processed in accordance with 103 CMR 403, Inmate Property.
 - (f) This directive does not apply to privileged mail.
2. Non-privileged incoming mail shall be stored by the facility in accordance with the following retention/shred schedule:

R.A. 110

Non-privileged Mail Retention/Shred Schedule	
Mail Date	Shred Date
January	March 1
February	April 1
March	May 1
April	June 1
May	July 1
June	August 1
July	September 1
August	October 1
September	November 1
October	December 1
November	January 1
December	February 1

The inmate may choose to have the original mail sent to a designated person at the inmate's expense. Original mail shall not follow the inmate upon transfer to another institution.

3. If an inmate is returned to higher security to a medium or maximum security facility that is photocopying non-privileged inmate mail, any mail that the inmate had within his/her property shall be deemed contraband and treated in accordance with 103 CMR 403.15, Disposal of Inmate Property, with the exception of previously authorized photographs (which the inmate may retain).

Staff shall ensure that the following time frames are adhered to, in accordance with 103 CMR 481.07(3):

"Outgoing mail shall be collected from the inmates and delivered to the post office, and incoming mail shall be picked up from the post office and delivered to the inmates, within 24 hours of collection, except when an article of mail is held pursuant to the provisions of 103 CMR 481.14 and 481.15."

R.A. III

REQUEST FOR INMATE TO INMATE CORRESPONDENCE

DATE _____

TO: Superintendent/Sheriff _____

Institution _____

FROM: Superintendent/Sheriff _____

Institution _____

RE: Our Inmate: _____ Commitment # _____

Your Inmate: _____ Commitment # _____

I have approved our inmate's request dated _____, to correspond with an inmate from your facility for the following reason, and I am forwarding this request to you for your consideration.

_____ Immediate family member. (Circle appropriate relationship): Husband, wife, mother, father, sister, brother, son, daughter.

_____ Pro Se Legal Action (inmates are co-plaintiffs or co-defendants in legal action in which both inmates are representing themselves). Court and case no. _____

TO BE COMPLETED BY RECEIVING FACILITY SUPERINTENDENT/SHERIFF

_____ REQUEST APPROVED.

_____ REQUEST DENIED FOR THE FOLLOWING REASON(S): _____

Superintendent/Sheriff_____
Date_____
Institution

R.A.112

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
DISAPPROVED CORRESPONDENCE/PUBLICATION AND CONTRABAND
NOTICE TO INMATE**

Intended Recipient

Name of Recipient	Inmate Number (if applicable)	Institution
Address – Street or P.O. Box	City	State and Zip Code

Sender

Name of Sender	Material Sent (name and date of correspondence/publication)	Institution(if applicable)
Address – Street or P.O. Box	City	State and Zip Code

Non-Delivery Information

Date Item Postmarked or Date Item Received	Item Rejected for Delivery (letter, package, magazine, book, etc.)
---	--

Reason(s) for Disapproval/Non-Delivery

Item(s) fall as a whole or in significant part into any one of the following categories:

- ☐ Transmittal of plans for, or the introduction of, contraband into the prison
- ☐ Plans for criminal activity or any activity which violates any departmental or institutional rule, regulation, order or policy
- ☐ Written in code
- ☐ Threatening or harassing correspondence including the sending of sexually explicit material to unwilling recipients
- ☐ Correspondence containing unsanitary or hazardous material (i.e., feces, insects, dirt, debris)
- ☐ Extortion demands
- ☐ Sending cash, drugs, jewelry or other contraband outside the prison
- ☐ The recipient has previously requested not to receive correspondence from the inmate pursuant to 103 CMR 481
- ☐ Improper or no return address
- ☐ Depicts or describes procedures for the construction of weapons, ammunition, bombs, or incendiary devices
- ☐ Depicts, describes or encourages methods of escape from correctional facilities or contains blueprints, drawings or similar descriptions of any correctional institution within the Commonwealth.
- ☐ Depicts or describes procedures for the brewing of alcoholic beverage(s), or the manufacture of drugs
- ☐ Depicts, describes or encourages activities that may lead to the use of physical violence or group disruption
- ☐ Encourages or instructs in the commission of criminal activity
- ☐ Sexually explicit pictorial material or material that features nudity. * Per 103 CMR 481.13(3)(c) it is the Deputy Superintendent's decision as to whether or not a publication should be excluded.
- ☐ Item(s) not authorized by 103 CMR 403, Inmate Property Policy.

Signature of Institution Staff Member	Date Signed
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R.A. 113

**** IMPORTANT** PLEASE NOTE: IF YOU DISPUTE THIS DECISION, YOU HAVE THE RIGHT TO APPEAL TO THE SUPERINTENDENT BY SUBMISSION OF A WRITTEN APPEAL WITHIN 7 DAYS OF RECEIPT OF THIS NOTICE.**

THIS ALSO SERVES AS YOUR INITIAL CONTRABAND NOTIFICATION UNDER 103 CMR 403.15 FOR THE ABOVE-REFERENCED ITEM(S).

Distribution: Original – Deputy Superintendent

Copy – Property Officer

Copy – Inmate

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
DISAPPROVED CORRESPONDENCE/PUBLICATION AND CONTRABAND
NOTICE TO INMATE**

28

Intended Recipient

Name of Recipient <i>Gaskin Tony</i>	Inmate Number (if applicable) <i>W52145</i>	Institution <i>SBCC</i>
Address - Street or P.O. Box	City	State and Zip Code

Sender

Name of Sender <i>Heshey</i>	Material Sent (name and date of correspondence/publication)	Institution (if applicable)
Address - Street or P.O. Box <i>25 Lyndale Ave</i>	City <i>Gloucester</i>	State and Zip Code <i>MA 01930</i>

Non-Delivery Information

Date Item Postmarked or Date Item Received <i>7/26/17</i>	Item Rejected for Delivery (letter, package, magazine, book, etc.) <i>Card and letter written with glitter pen</i>
--	---

Reason(s) for Disapproval/Non-Delivery

Item(s) fall as a whole or in significant part into any one of the following categories:

- ☐ Transmittal of plans for, or the introduction of, contraband into the prison
- ☐ Plans for criminal activity or any activity which violates any departmental or institutional rule, regulation, order or policy
- ☐ Written in code
- ☐ Threatening or harassing correspondence including the sending of sexually explicit material to unwilling recipients
- ☐ Correspondence containing unsanitary or hazardous material (i.e., feces, insects, dirt, debris)
- ☐ Extortion demands
- ☐ Sending cash, drugs, jewelry or other contraband outside the prison
- ☐ The recipient has previously requested not to receive correspondence from the inmate pursuant to 103 CMR 481
- ☐ Improper or no return address
- ☐ Depicts or describes procedures for the construction of weapons, ammunition, bombs, or incendiary devices
- ☐ Depicts, describes or encourages methods of escape from correctional facilities or contains blueprints, drawings or similar descriptions of any correctional institution within the Commonwealth.
- ☐ Depicts or describes procedures for the brewing of alcoholic beverage(s), or the manufacture of drugs
- ☐ Depicts, describes or encourages activities that may lead to the use of physical violence or group disruption
- ☐ Encourages or instructs in the commission of criminal activity
- ☐ Sexually explicit material or material that features nudity. *Per 103 CMR 481.15(3)(c) it is the Deputy Superintendent's decision as to whether or not a publication should be excluded.
- ☒ Item(s) not authorized by 103 CMR 403, Inmate Property Policy.

Signature of Institution Staff Member <i>[Signature]</i>	Date Signed <i>7/26/17</i>
---	-------------------------------

R.A. 114

**** IMPORTANT ** PLEASE NOTE: IF YOU DISPUTE THIS DECISION, YOU HAVE THE RIGHT TO APPEAL TO THE SUPERINTENDENT BY SUBMISSION OF A WRITTEN APPEAL WITHIN 7 DAYS OF RECEIPT OF THIS NOTICE.**

THIS ALSO SERVES AS YOUR INITIAL CONTRABAND NOTIFICATION UNDER 103 CMR 403.14 FOR THE ABOVE REFERENCED ITEM(S). PLEASE COMPLETE THE SECOND PAGE OF THIS FORM AND ADVISE THE INSTITUTION PROPERTY OFFICER OF YOUR CHOSEN METHOD OF DISPOSAL.

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION**

INMATE GRIEVANCE FORM

FORWARD TO INSTITUTIONAL GRIEVANCE COORDINATOR (IGC)

Name GASKINS TONY Grievance# 97843 Institution SOUZA-BARANOWSKI CORRECTIONAL

Commit No. W52145 Housing N2 Date Of Incident 20170726 Date Of Grievance 20170730

Informal filed Yes

Complaint My daughter, Heshey Sova mailed me around 20 pictures of my grandchildren, herself, and my three sons, along with a birthday card, letter and \$100 money order. The mailroom Captain sent me a contraband slip stating that the card and letter was written with a glitter pen. However, nowhere in it does it indicates anything about the pictures or the money order. When I filed the informal complaint, the Captain never mentions the pictures, and explained that the money order was sent to the treasurer. My daughter informed me that she had also signed that money order with that same pen. I am not playing this game with you people. This is an assassination on my daughter's character, whose husband is a state police officer. The pictures are of my family and are of sentimental value and I want them, as well as the mail sent to me by my daughter.

Remedy Requested If my pictures of my children are not found and provided to me as well as the letter and card, I will be filing a lawsuit against this policy, the Captain and Superintendent. I want damages in the amount of \$10,000.00, as the pictures, card, and letter have sentimental value.

Staff Recipient Hisman Bethany K. CO I

Staff Involved _____

Signature _____

RECEIPT BY INSTITUTIONAL GRIEVANCE COORDINATOR

Date Received 20170815 Decision Date 20171019

Signature Tocci Thomas M CO II

Final Decision DENIED

Decision Your grievance is denied. The mail room was contacted and it has been determined that the mail that you were referencing is currently located with contraband mail items due to it being written on with glitter pen. Glitter is considered contraband and will not be allowed within the institution. You have until 10/26/17 to answer the contraband slip to have it mailed out at your expense. If you fail to respond by 10/26/17 the contraband will be disposed of as seen fit by the institution.

Signature _____ Date _____

Denied grievances may be appealed to the Superintendent within 10 working days of Institutional Grievance Coordinators decision.

R.A. 115

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION

Name GASKINS TONY

Institution SOUZA-BARANOWSKI CORRECTIONAL

Commit No. W52145 Housing N2

Date Of
Incident 20170726

Date Of
Grievance 20170730

INMATE RECEIPT

SOUZA-BARANOWSKI CORRECTIONAL

Name GASKINS TONY

Institution

Commit No. W52145

Grievance# 97843

Date Received 20170815

Signature. Hisman Bethany K CO I

R.A. 116

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
INMATE GRIEVANCE APPEAL FORM
FORWARD TO SUPERINTENDENT

Name GASKINS TONY Institution SOUZA-BARANOWSKI CORRECTIONAL
Number W52145 Housing N2 Appeal Date 21-OCT-17 Date Of Grievance 30-JUL-17
Appeal Received Date 23-OCT-17
Appeal GRIEVANCE 97843:
The IGC is stating that the birthday card my daughter mailed me that was written in "glitter pen" is contraband, and not permitted in the institution. There is no such regulation or policy written to state that glitter pen ink is not permitted, and not allowing me the birthday card sent to me by my daughter violates my First Amendment rights, as well as Article 12 of the Massachusetts Constitution. The CMR regulating mail gives no such authority to this administration to keep me from re-celving mail written in glitter pen.
Remedy Requested I am requesting that the birthday card not be destroyed until the outcome of the civil litigation. If its destroyed before this matter has had its day in court, I want damages in the amount of \$15,000, whereas the card has sentimental value
Staff Recipient Hisman Bethany K CO I
Signature _____

DECISION BY SUPERINTENDENT

Appeal Received Date 23-OCT-17 Decision Date _____ Decision _____
Decision By _____
Reasons _____
Signature _____ Date _____

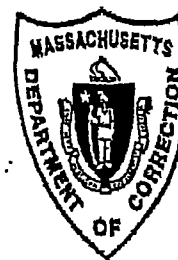
INMATE RECEIPT

Inmate's Name GASKINS TONY Institution SOUZA-BARANOWSKI CORRECTIONAL
Number W52145 Appeal Received Date 23-OCT-17
Staff Recipient Hisman Bethany K CO I
Superintendent's Signature _____

R.A. 11.7



The Commonwealth of Massachusetts
Executive Office of Public Safety & Security
Department of Correction
Souza-Baranowski Correctional Center
P.O. Box 8000
Shirley, Massachusetts 01464



Charles D. Baker
Governor

Karyn Polito
Lieutenant Governor

Daniel Bennett
Secretary

Office #(978) 514-6500
Fax #(978) 514-6529
www.mass.gov/doc

Thomas A. Turco III
Commissioner

John A. O'Malley
Chief of Staff

Paul Dietl
Bruce I. Gelb
Michael G. Grant
Carol A. Miel
Deputy Commissioners

Steven Silva
Superintendent

TO: All Staff, Visitors, Volunteers and Inmates
FROM: Brian McDonald, Deputy Superintendent
DATE: December 4, 2017
RE: Glitter – Mail/Make-up Materials/Products

Please be advised that this is to serve as a reminder that staff, visitors and volunteers are not allowed to enter the institution while wearing any type of glitter make-up materials.

Additionally, any mail to include cards, letters, etc., containing a glitter type substance will not be allowed into the facility and will be considered contraband.

Glitter or glitter type products shall not be allowed within the facility unless approved by the Superintendent.

Thank you for your anticipated cooperation regarding this matter.

BM/bs

Cc: Steven Silva, Superintendent
Kimberley Lincoln, Deputy Superintendent Re-Entry
Christopher Phelps, Director of Security
Captains
Michael Rumery, IPS Commander
Outer Control
Mailroom staff
Visit Processing
Posted All Housing Units
file

R.A. 118

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPT.
DOCKET NO. 1885CV00554TONY GASKINS,
Plaintiff

V.

STEVEN A. SILVA,
Superintendent of Souza Baranowski
Correctional Center, et al.,
Defendants**DEFENDANT SHELLEY WILLIAMS' RESPONSES TO PLAINTIFF'S FIRST SET OF
REQUESTS FOR ADMISSIONS**

1. Defendant objects to these admissions to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections.
2. Defendant objects to these admissions to the extent they seek the disclosure of information not required under the Federal Rules of Civil Procedure, or not reasonably calculated to lead to the discovery of admissible evidence.
3. Defendant objects to these admissions as unduly burdensome and oppressive insofar as they seek information in the plaintiff's possession, custody and/or control.
4. Defendant's responses to these admissions, insofar as it may refer to a document produced, shall not be deemed to constitute an admission that any particular document exists, is relevant, or is admissible as evidence or that the subject matter of the request is relevant to the litigation.

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5. Subject to and without waiving any of his objections, Defendant reserves the right to supplement these responses, as needed, should she later obtain additional, responsive information.

Request No. 1

Do you admit or deny that you are the Captain at Souza-Baranowski Correctional Center (SBCC), and that you oversee the institution's mailroom?

Response No. 1

Defendant admits only to the extent that defendant was formerly a Captain at the SBCC. One of defendant's responsibilities was to oversee the inmate mailroom at the SBCC. Defendant has since retired from the Department of Correction (Department or DOC). Otherwise defendant denies.

Request No. 2

Do you admit or deny that as the overseer of the mailroom at the prison, that you are required to follow the mailroom regulations, 103 CMR 481.00, et seq.?

Response No. 2

Defendant admits only to the extent that, while employed by the Department, she was required to follow all regulations and policies implemented by the Department, including 103 CMR 481, Inmate Mail. Otherwise defendant denies.

Request No. 3

Do you admit or deny that you have your subordinate officers who work the mailroom, to confiscate and contraband any and all letters written in "glitter pen," and greeting cards that [have] glitter on them?

Response No. 3

Defendant admits only to the extent that there were officers subordinate to defendant's rank as Captain who worked in the mailroom at SBCC. Defendant further admits that, at all times relevant to plaintiff's Complaint, any correspondence or items that contained glitter were not allowed into the facility due to safety and security concerns. Otherwise defendant denies.

Request No. 4

R.A. 120

Do you admit or deny that there is no regulation that grants you or the administration at Souza Baranowski Correctional Center the authority to "not" allow into the facility via mail, glitter cards or written letters with glitter pens.

Response No. 4

Defendant denies.

Request No. 5

If your answer to Request No. 4 is yes, then can you produce the statute, rule, or regulation that grants such authority?

Response No. 5

Defendant objects, as this request does not seek an admission or denial.

Request No. 6

Do you admit or deny that you are not allowing Mr. Gaskins to receive legal documents from persons who are not lawyers?

Response No. 6

Defendant denies, as defendant is no longer employed by the Department.

Request No. 7

Do you admit or deny that you are violating the First Amendment when you deny Gaskins legal documents mailed to him from third party persons?

Response No. 7

Defendant denies.

Request No. 8

Do you admit or deny that there are laws that protect Mr. Gaskins legal documents mailed to him from third party persons?

Response No. 8

Defendant objects, as this request calls for a legal conclusion.

Request No. 9

R.A. 121

Do you admit or deny that you are contrabanding partially nude and non-nude photos of girls paid for through a service agent/company

Response No. 9

Defendant objects to this request as vague, as there is no reference of time for this request. Without waiving the objection, defendant admits only to the extent that items received in the mail may be seized as contraband if they contain sexually explicit material and/or nudity, pursuant to 103 CMR 481, Inmate Mail. Otherwise, defendant denies.

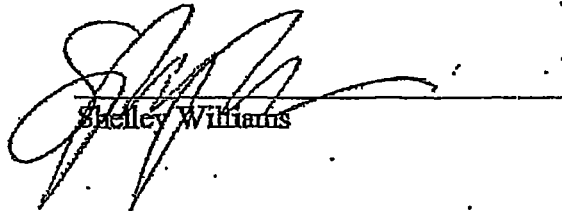
Request No. 10

Do you admit or deny that when you denied Gaskins the catalog of the non-nude photographs of girls, that you violated Lovell v. Superintendent, 26 Mass. App. Ct. 35 (1988), where the SJC allowed prisoners to have in their possession nude photographs?

Response No. 10


Defendant objects, as this request calls for a legal conclusion.

Signed under the pains and penalties of perjury on this 7th day of June, 2019.


Shelley Williams

Approved as to form:

NANCY ANKERS WHITE
Special Assistant Attorney General


Jennifer Staples
Associate General Counsel
BBO# 631399
Department of Correction
70 Franklin Street, Suite 600
Boston, MA 02110-1300
617-727-3300, ext. 1144
Jennifer.Staples@doc.state.ma.us

R.A. 122

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPT.
DOCKET NO. 1885CV00554

TONY GASKINS,
Plaintiff

V.

STEVEN A. SILVA,
Superintendent of Souza Baranowski
Correctional Center, et al.,
Defendants

DEFENDANT THOMAS LYNCH'S ANSWERS TO PLAINTIFF'S FIRST SET OF
INTERROGATORIES

1. Counsel objects to these interrogatories to the extent that they seek discovery beyond the permissible scope of discovery under Massachusetts Rules of Civil Procedure, including irrelevant or privileged information, documents and materials that are privileged from discovery.
2. Counsel further objects to plaintiff's attempt to define words and phrases beyond those meanings commonly understood and understood by the responding designee.
3. Counsel objects to these interrogatories as unduly burdensome and oppressive insofar as they seek information in the plaintiff's possession, custody and/or control.
4. Defendant's responses to these interrogatories shall not be deemed to constitute an admission that any particular document exists, is relevant, or is admissible as evidence or that the subject matter of the request is relevant to the litigation. Moreover, responses or lack of response to any interrogatory shall not be deemed to constitute an admission.
5. Although each of counsel's objections is made solely on the responding defendant's behalf, nothing in these interrogatory answers waives the objections of all other defendants.

Notwithstanding such objections and understandings, nor waiving same, defendant Thomas Lynch responds as follows:

INTERROGATORY NO. 1:

Describe your function as a mailroom officer at Souza Baranowski Correctional Center.

ANSWER:

As a mail room officer, I am responsible to pick up mail every morning at the United States Post Office located in Shirley, MA. The privileged mail is logged and fluoroscoped and then forwarded to the Inner Perimeter Security for hand delivery. Non-privileged mail is opened; searched for contraband, and photocopied. I then drop off the mail at the facility for delivery to the inmates by the 3x11pm shift.

INTERROGATORY NO. 2:

Please state how long you have been working as a correctional officer, and within the mailroom at Souza Baranowski Correctional Center.

ANSWER:

I have been working as a correction officer since July 5, 2009 and in the mail room for approximately four (4) years.

INTERROGATORY NO. 3:

As a mailroom officer within the Department of Correction, are you required to follow the mail Regulations?

ANSWER:

As an employee of the Department of Correction, I am required to follow all current regulations, policies, and procedures, including 103 CMR 481, Inmate Mail.

INTERROGATORY NO. 4:

Who told you to contraband legal mail mailed into Tony Gaskins from a third party?

ANSWER:

The mail was seized pursuant to 103 CMR 481, Inmate Mail.

INTERROGATORY NO. 5:

Do you know that legal mail is protected speech under the First Amendment?

ANSWER:

Defendant objects to this interrogatory as it calls for a legal opinion and a legal conclusion.

INTERROGATORY NO. 6:

What regulation or policy authorizes you to withhold legal mail mailed into Tony Gaskins from a third party?

ANSWER:

Defendant objects to the instant interrogatory as overly broad, conclusory, and vague. Without waiving the objection, defendant states as follows:

Various regulations, policies and procedures allow Department of Correction staff to seize and/or withhold items as contraband that would pose a safety and security risk to the facility, Department of Correction staff, inmates, volunteers, vendors, and/or the public. They include, but are not limited to, 103 CMR 481, Inmate Mail, 103 CMR 403, Inmate Property, and 103 CMR 430, Inmate Discipline.

INTERROGATORY NO. 7:

What regulation or policy authorizes you to withhold cards or letters with glitter on them?

ANSWER:

Please see Answer to Interrogatory No. 6.

INTERROGATORY NO. 8:

Do you withhold semi-nude photographs from being allowed into a prisoner?

ANSWER:

Please see Answer to Interrogatory No. 6.

INTERROGATORY NO. 9:

If your answer to question 8 is yes, please state what regulation(s) grants such authority, and what is deemed 'nudity' by the standards of Souza Baranowski Correctional Center?

ANSWER:

Please see Answer to Interrogatory No. 6. Furthermore, defendant states that the term "nude" is defined in 103 CMR 481, Inmate Mail.

INTERROGATORY NO. 10:

Who ordered you to withhold legal mail from Mr. Gaskins that was mailed to him through a third party?

ANSWER:

Defendant objects to the instant interrogatory as overly broad, conclusory, and vague. Without waiving the objection, defendant states that any items seized as contraband was seized pursuant to the Department of Correction regulations, policies and procedures.

INTERROGATORY NO. 11:

Please identify all person(s) involved with creating and implementing the legal mail restriction, glitter ban, and semi-nude picture ban?

ANSWER:

Defendant objects to the instant interrogatory as overly broad, conclusory, and vague. Without waiving the objection, defendant states as follows:

I have no personal knowledge of what staff members of the Department of Correction created and/or implemented specific Department of correction regulations, policies, or procedures. All Department of Correction regulations, policies and procedures must be followed by every Department staff member.

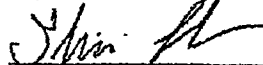
INTERROGATORY NO. 12:

Describe in detail the relationship between the legal mail restriction, glitter mail ban, and nude picture ban and First Amendment, including at what point in time the constitutional right may be abrogated?

ANSWER:

Defendant objects to the instant interrogatory as it calls for a legal opinion and a legal conclusion,

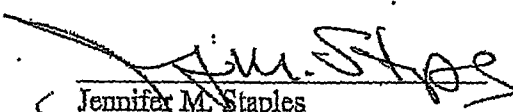
Signed under the pains and penalties of perjury this 20th day of May, 2019.


Thomas Lynch

Dated: 5/20/19

As to Objections:
Respectfully submitted,

NANCY ANKERS WHITE
Special Assistant Attorney General


Jennifer M. Staples
BBO # 631399

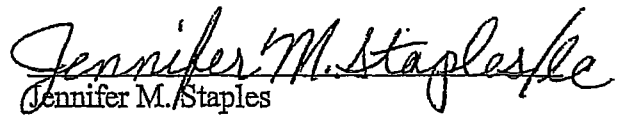
Dept. of Correction Legal Division
70 Franklin Street, Suite 600
Boston, Massachusetts 02110
(617) 727-3300, Ext. 1144
Jennifer.Staples@state.ma.us

CERTIFICATE OF SERVICE

I, Jennifer M. Staples, counsel for defendants, hereby certify that on this date, I served a copy of the forgoing document on the following party, via first class mail, postage prepaid, as follows:

Tony Gaskins, *pro se*
MCI- Norfolk
2 Clark Street
P.O. Box 43
Norfolk, MA 02056

Dated: 5/21/19


Jennifer M. Staples

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*The Commonwealth of Massachusetts
Executive Office of Public Safety & Security
Department of Correction
Souza-Baranowski Correctional Center
P.O. Box 8000
Shirley, Massachusetts 01464*



Charles D. Baker
Governor

Karyn Polito
Lieutenant Governor

Thomas A. Turco III
Secretary

Office #(978) 514-6500
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Carol A. Mici
Commissioner

John A. O'Malley
Chief of Staff

Christopher M. Fallon
Jennifer A. Gaffney
Michael G. Grant
Paul J. Henderson
Thomas J. Preston
Deputy Commissioners

Steven P. Kenneway
Superintendent

TO: All Concerned

THRU: Jessica DeJesus, ACA/Policy Coordinator

FROM: Steven P. Kenneway, Superintendent

DATE: Tuesday, April 30, 2019

RE: 103 CMR 481, INMATE MAIL

Please be advised the above-mentioned procedure is currently in the process of an institutional review. Until the process is complete, the current procedure is found to be operationally and procedurally sound.

Approved: 
Superintendent

Date: 4/30/19

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Commonwealth of Massachusetts
Department of Correction
SOUZA BARANOWSKI CORRECTIONAL CENTER
INSTITUTIONAL PROCEDURES
in accordance with:
103 CMR 481 - INMATE MAIL

Souza-Baranowski Correctional Center	PROCEDURE
TITLE: MAIL PROCEDURES	103 CMR 481

PURPOSE: The purpose of this procedural statement is to establish guidelines governing the sending and receiving of mail by inmates confined in S.B.C.C.

ACCESS: Staff/Inmates

REVIEW: Annually

Approved: _____

Superintendent

Date: _____

1/120/17

Approved: _____

Reviewing Authority

Date: _____

1/23/18

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I. DAILY OPERATIONS

A: The 7X3 Administrative Captain shall be responsible for daily supervision of the inmate mail operations.

1. General Population:

- a. Inmates shall deposit mail in the institution locked mailbox located in the Main Level 2 Corridor adjacent to the dining hall. Mail deposits shall be conducted during the Lunch meal only, on Sunday through Friday evenings. Inmate mail shall be collected each morning by 7:30 A.M. from the locked mailbox located in the main level two corridor Monday through Saturday, except Sunday and Postal Holidays. The mailbox will only be kept in the level two corridor during the lunch meal. At the conclusion of the lunch meal the box will be secured in an area not normally accessible to inmates.
- b. The 3x11 shift officers shall collect mail and inmate grievances for inmates in housing units L-1, J-1, K-1, G-1, G-2, H-1, L-1, M-1, N-1, and P-1. This will be conducted after the 10:00 p.m. Official IMS Count has been accepted by Inner Control, Monday through Saturday, except Sunday and Postal Holidays, by utilizing the inmate locked mailbox provided by the mailroom. During the outgoing mail and grievance collection, inmates will be required to pass the envelope to the officer. The officer will then inspect the envelope(s) to verify that the inmate depositing the mail into the locked box is the inmate whose name appears on the correspondence or package. The Officer will remain positioned where the inmate can observe the mail being placed into the locked mailbox. Prior to the mail collection round, the mailbox shall be kept in a secure area such that no inmate can gain access to it.
- c. After the inspection by the officer the mail shall be placed in the inmate locked mailbox. The inmate locked mailbox will then be returned to the mailroom by 11:00 p.m. by the

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3 x 11 shift officers.

- d. Kitchen Workers -Those Kitchen workers housed in the L-2 unit will have the opportunity to deposit their mail within that housing unit. Or they can utilize the hand held box located in the Kitchen. (After the inspection by the Officer)
- e. Prior to an inmate depositing mail into any mailbox, whether it is a locked, hand-held box within the housing unit, or the mailbox in the main corridor, staff must positively identify the inmate mailing the letter as the person listed on the return address. IPS or staff assigned by the Shift Commander will be responsible for verifying this during the Noon meal.

2. SMU & STP

- a. The 3x11 shift officers shall collect mail for Special Management Units and Secure Treatment Program after the 10:00 p.m. Official IMS Count has been accepted by Inner Control, Monday through Saturday, except Sunday and Postal Holidays, by utilizing the inmate locked mailbox provided by the mailroom. During the outgoing mail collection inmates will be required to deposit the envelope on the cuff slot. The officer will then inspect the envelope(s) to verify that the inmate depositing the mail into the locked box is the inmate whose name appears on the correspondence or package.
- b. After the inspection by the officer the mail shall be placed in the inmate locked mailbox. The inmate locked mailbox will then be returned to the mailroom by 11:00 p.m. by the 3 x 11 shift officers.

3. HSU

- a. The 3x11 Health Services Unit officers shall collect mail for the HSU inmates after the 10:00 p.m. Verbal Count has been accepted by Inner Control, Monday through Saturday,

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except Sunday and Postal Holidays. During the outgoing mail collection the officer will inspect the envelope(s) to verify that the inmate depositing the mail into the locked box is the inmate whose name appears on the correspondence or package.

- b. After the inspection by the officer, the inmate shall place the mail in the locked mailbox. The inmate locked mailbox will then be returned to the mailroom by 11:00 p.m. by the 3 x 11 shift officers.

B. The duties of the mail room officers shall be as follows:

1. The Mailroom officers will collect all outgoing mail from the inmate locked mail box located in the Level 2 staff break room, by 7:30 a.m. Monday through Saturday except Sunday and Postal Holidays.
2. Pick up any outgoing staff mail from the Superintendents Office area.
3. A representative for the mail room shall attend Staff Access as scheduled.
4. All out-going Privileged and Non-Privileged inmate correspondence/ packages shall be required to successfully pass a fluoroscope examination for contraband materials. All outgoing inmate correspondence shall be stamped stating its origination from a correctional institution. Mail shall be stamped in blue ink only.
5. Inspect all outgoing mail for proper postage. All outgoing inmate mail must have a return address consisting of the Inmate Name, S.B.C.C., P.O. Box 8000, Shirley MA 01464, or the letter will not be mailed. Mail that is found without the proper return address will be returned to the inmate. In the event it can not be determined who the inmate is, the mail will be placed in the "Dead Letter File" located in the mailroom for 30 days.
6. The mailroom Officers shall process/ examine all incoming Privileged and Non-Privileged Mail via the fluoroscope machine. The mailroom Officers shall sort, open, remove address labels, stamps and back

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flaps, and inspect all non-privileged incoming inmate mail for delivery within 24 hours. This shall be in accordance with 103 CMR 481 for the purpose of the prevention of the introduction of contraband and the receipting of funds.

7. All incoming mail will be retrieved each day by the mailroom Officers at the Shirley Post Office no earlier than 8:30 am each morning, with the exception of Sundays and Postal Holidays. All incoming mail shall be processed and delivered to the inmate within 24 hours unless security considerations justify otherwise, as determined by the Superintendent.
8. All packages, books are to be examined via a fluoroscope machine prior to delivery inside the institution. All packages, books with the exception of privileged mail, shall be forwarded to the Property Department for processing. All packages shall be delivered within 24 hours unless security considerations justify otherwise, as determined by the Superintendent.
9. Mailroom staff shall hold all donated items that are delivered via mail to SBCC's religious staff members at the off site mailroom. These articles shall be collected by a member of the IPS team, who shall fluoroscope and search all of the items. The materials will then be delivered to the storage room within the pedestrian trap at SBCC to be retrieved by the appropriate religious staff member.
10. Mailroom staff shall forward all incoming money orders or checks to the Treasures office to be receipted and transferred to the inmate's account in accordance SBCC 405. The inmate shall receive an appropriate receipt via the institutional mail.
11. All incoming mail will be sorted according to inmate housing units and secured in the mailroom for distribution to the 3X11 Officers assigned to each housing unit. The Housing Unit Officers will be responsible to pick up the mail/ along with the locked mailboxes for G-1, J-1, K-1, G-2, H-1, L-1, M-1, N-1, P-1, HSU, and the SMU's from the mail room. Any mailbags or locked mailboxes remaining in the mailroom at the

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conclusion of the 7x3 shift will be delivered to the Pedestrian Trap Officer and the Outer Control OIC will be notified. He/She will be responsible to have the mailbags delivered to the appropriate Housing Units.

12. In the event there is more than one inmate with the same name, it will be the responsibility of the Mail Officers to check commitment numbers to determine which inmate and housing unit to forward the mail. If the mail officers are unable to verify a commitment number, the mail will be returned to sender.
13. The 3X11 Officer assigned to the housing unit shall deliver the Non-Privileged inmate mail immediately following the 4:20 p.m. Official Count. The mail will be delivered solely to the addressee.
14. All Privileged mail will be hand delivered solely to the addressee by an IPS officer assigned to distribute Privileged mail on the 2x10 shift. The mail will then be opened by staff in the presence of the inmate for the sole purpose of ascertaining that its contents are free of contraband. The inmate shall sign for the receipt of his legal mail. In the event the Privileged mail should not pass the fluoroscope it shall be returned to sender and the mailroom officer shall complete Attachment A and return it to the sender.
15. All inmates who have transferred to another facility shall have their mail forwarded to that facility. Inmates that are remanded from the courts will have their mail held in the mail room for up to thirty (30) days then returned to sender if the inmate does not return.

Inmates that are out of the institution (i.e. court trip, hospital trip) shall have their Privileged mail returned to the mailroom by the Officer distributing mail. All Privileged mail will be delivered to the inmate when they return.

Inmates on a Medical/Mental Health Watch will have their mail held in the mailroom until the watch is over.

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16. In the event an inmate has changed housing unit/block, the 3 X 11 Housing Unit Officers shall return the mail to the mailroom to be distributed in the new housing unit the following day.

C. The following steps shall be adhered to regarding Contraband;

1. When any correspondence/publication, or portion thereof addressed to an inmate, is not delivered to the inmate for any reason set forth in 103 CMR 481, the inmate and sender, when identifiable, shall be promptly notified in writing.

- a. The reason for refusing to deliver the correspondence or a portion thereof to an inmate;

- b. The fact that a written appeal may be submitted by the inmate or sender to the Superintendent within (7) days.

2. In the event an inmate requests to view disapproved material pursuant to 103 CMR 481.16 (4) the following procedure shall be utilized:

- a. Inmates will fill out a "Request to View Contraband" form (Attachment C) and forward to the mailroom for processing. Once the mailroom receives the completed form the inmate may be permitted to view the contraband.

The viewing schedule for contraband is in accordance with the shifts access schedule.

HSU/SMU's/STP will have contraband brought to the inmate at a time suitable to the unit schedule.

3. The above procedure will also be used for publications/ books that are purchased which are not allowed for retention by the inmate

4. Road/Street maps pertaining to any area within the Commonwealth of Massachusetts and residential listings indicating street addresses or telephone numbers are not allowed for retention by inmates.

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D. The following steps shall be adhered to regarding privileged mail:

1. The Mailroom Officer shall separate all privileged mail by the appropriate blocks. The Mailroom Officer shall record the amount of each inmate's privileged mail items in the Privileged Mail Log North/South Side, which is kept in the Mail Room.
2. Incoming Privilege Mail is required to successfully pass a fluoroscope examination for contraband materials. In the event that privileged mail shall not pass the fluoroscope it shall be returned to sender and an attachment C shall be completed and forwarded to the Deputy of Operations to be signed and sent to the return address.
3. All privileged mail shall be collected at the off site mail room by a member of the IPS team and delivered daily. It shall be opened and inspected by the IPS officer assigned to privileged mail delivery after the officer has made a positive identification of the inmate. The contents of the envelope shall be opened (not read) in full view of the receiving inmate for the purpose of inspecting mail for contraband, legal forms with carbon paper, or funds that require receipting. The inmate must sign for the privileged mail upon receipt. Funds shall be returned to the mailroom to be forwarded to the Treasurer's office for receipting. Any type of court documents that have carbon paper between the various pages shall require that the inmate completely fill out the court document in the presence of the Officer. The court document shall be presented to the officer to verify/and remove all carbon papers from the document for removal from the institution. Any legal CD's shall be returned to the mailroom to be forwarded to the Librarian.
4. If an inmate refuses to accept a privileged mail item, the IPS officer issuing the privileged mail shall record "refused to accept" and initial the entry on the envelope of privileged mail and return said mail to the mailroom. The item shall then be returned to the sender.

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II. INMATE TO INMATE CORRESPONDENCE

- A. An inmate may be permitted to correspond with an inmate confined in another correctional or penal institution in the Commonwealth, providing the other inmate is either an immediate family member or party in legal litigation.
- B. The Superintendent's Office shall be responsible for processing such requests received by an inmate. The Unit teams are responsible to verify the relationship (i.e.: family, legal, etc.) by reviewing the inmate's six-part folder and forwarding the pertinent information to the Superintendent's Office.
- C. Once clarification/confirmation has been determined, the request shall be approved or denied by the Superintendent in conjunction with the corresponding Institution Superintendent. Copies of all requests shall be maintained in the inmate's six-part folder.
- D. A list of approved/denied inmate-to-inmate correspondence shall be maintained by the Superintendent's Office and a copy forwarded to the mailroom for reference.
- E. In the event an inmate receives mail from another inmate, but is not approved to, the mail room officer will return correspondence to "sender".
- F. Approved inmate to inmate correspondence is reviewed every ninety (90) days by the Superintendents office.

III. FREE POSTAGE FOR INDIGENT INMATES

- A. Indigent inmates shall be permitted to mail up to three (3) first class letters weighing one (1) ounce or less, at the institution's expense, per week. In addition, an unlimited number of legal correspondences to any Court Official will be permitted at the institution's expense in compliance with the 481.10 "where necessary" to any court official. A charge shall not be placed against an inmate's future deposits in his personal account for costs incurred in this section.
- B. The Mail Room Officer, upon inspection of out-going mail, shall forward any correspondence labeled "Free Postage" or "F.S." in the postage area, to the Treasurer's Office daily.

- C. The Treasurer's Office shall verify indigence and once verified, the letter(s) will be processed and mailed.
- D. If the mail does not meet the indigence Guidelines, (see Attachment B), the Treasurer's office staff will complete attachment B, specifying the reason for its denial.
- E. The Attachment D form is completed by the Treasurer and attached to rejected letters, then forward it to the inmate.
- F. The Treasurer's Office will track the number of non-legal indigent letters mailed per week per inmate.

IV. CERTIFIED MAIL

- A. The inmate must complete all certified mail forms before being signed by unit team or unit staff. Blank forms are available from the unit team. Once certified mail is processed by unit CPO's, it shall be placed in the institution mailboxes to be forwarded to the Treasurer's office. Certified mail is sorted and delivered to inmate fund office (excluding Saturdays, Holidays) for verification of available funds. Once verification has been made it will be mailed within 24 hours. All certified mail will be logged in the Certified Mail logbook.

V. PUBLICATIONS

- A. Inmates may receive a maximum of five pages per day, except Sundays and Postal holidays, of a portion extracted, photocopied, or clipped from such items as an attachment to personal correspondence as long as the material is not otherwise prohibited by the 103 CMR 481, Inmate Mail. (i.e. if an inmate receives a piece of mail with fifteen(15) pages of internet printing along with a personal letter, 10 of the internet pages shall be handled according to contraband mail guidelines. However, there is no limit on the amount of incoming mail an inmate receives. This shall not apply to Privileged mail.

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Attachment A

(Attorney's Name and Address)

Dear _____:

This letter is to advise you that due to serious security concerns, correspondence you have sent to Inmate/Detainee: _____ # _____ has been returned to sender.

I apologize for the inconvenience and hope that it is understood the safety and security of the institution is a top priority.

Sincerely,

Deputy Superintendent

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Attachment B

INDIGENT MAIL

To: _____ Unit: _____

RE: Outgoing Mail

The attached outgoing mail is being returned
To you for the following reason:

_____ Non-indigent - a total of \$10.00 or less
in your account for the past sixty (60)
days.

_____ You have exceeded the amount of free
letters that you are entitled to - three
(3) personal letters, per week, weighing
one (1) ounce or less that use one (1)
first class stamp.

_____ Indigent mail is first class only and does
not include certified mail unless you have
a court order stating that the DOC must
pay.

_____ Your full name, number, and return address
must appear on the upper left hand corner
of the envelope.

_____ CMR 481.10 states legal mail "where
necessary" to any court official.

_____ Other: _____

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REQUEST TO VIEW MAIL CONTRABAND

NAME: _____ COMMITMENT NUMBER: _____

HOUSING UNIT: _____ DATE: _____

In accordance with 103 CMR 481.00 Inmate Mail,
I would like to view the contraband being held in
the mailroom.

(DO NOT WRITE BELOW THIS LINE)

Inmate Signature: _____

Date viewed: _____

Staff Signature: _____

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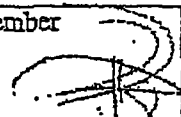
**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
DISAPPROVED CORRESPONDENCE/PUBLICATION AND CONTRABAND
NOTICE TO INMATE**

Intended Recipient		
Name of Recipient <i>Griskins Tony</i>	Inmate Number (if applicable) <i>11 52145</i>	Institution
Address - Street or P.O. Box	City	State and Zip Code
Sender		
Name of Sender <i>#641441 Jose Delacruz</i>	Material Sent (name and date of correspondence/publication)	Institution (if applicable)
Address - Street or P.O. Box <i>P.O. Box 861</i>	City <i>Trenton</i>	State and Zip Code <i>NJ 08625</i>
Non-Delivery Information		
Date Item Postmarked or Date Item Received <i>10/7/17</i>	Item Rejected for Delivery (letter, package, magazine, book, etc.) <i>15 pripps total 5 pripps sent to unit</i>	

Reason(s) for Disapproval/Non-Delivery

Item(s) fall as a whole or in significant part into any one of the following categories:

- ☐ Transmittal of plans for, or the introduction of, contraband into the prison
- ☐ Plans for criminal activity or any activity which violates any departmental or institutional rule, regulation, order or policy
- ☐ Written in code
- ☐ Threatening or harassing correspondence including the sending of sexually explicit material to unwilling recipients
- ☐ Correspondence containing unsanitary or hazardous material (i.e., feces, insects, dirt, debris)
- ☐ Extortion demands
- ☐ Sending cash, drugs, jewelry or other contraband outside the prison
- ☐ The recipient has previously requested not to receive correspondence from the inmate pursuant to 103 CMR 481
- ☐ Improper or no return address
- ☐ Depicts or describes procedures for the construction of weapons, ammunition, bombs, or incendiary devices
- ☐ Depicts, describes or encourages methods of escape from correctional facilities or contains blueprints, drawings or similar descriptions of any correctional institution within the Commonwealth.
- ☐ Depicts or describes procedures for the brewing of alcoholic beverage(s), or the manufacture of drugs
- ☐ Depicts, describes or encourages activities that may lead to the use of physical violence or group disruption
- ☐ Encourages or instructs in the commission of criminal activity
- ☐ Sexually explicit material or material that features nudity. *Per 103 CMR 481.15(3)(c) it is the Deputy Superintendent's decision as to whether or not a publication should be excluded.
- ☒ Item(s) not authorized by 103 CMR 403, Inmate Property Policy.

Signature of Institution Staff Member 	Date Signed <i>10/7/17</i>
--	-------------------------------

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**** IMPORTANT ** PLEASE NOTE: IF YOU DISPUTE THIS DECISION, YOU HAVE THE RIGHT TO APPEAL TO THE SUPERINTENDENT BY SUBMISSION OF A WRITTEN APPEAL WITHIN 7 DAYS OF RECEIPT OF THIS NOTICE.**

THIS ALSO SERVES AS YOUR INITIAL CONTRABAND NOTIFICATION UNDER 103 CMR 403.14 FOR THE AB- REFERENCED ITEM(S). PLEASE COMPLETE THE SECOND PAGE OF THIS FORM AND ADVISE THE INSTITUTION PROPERTY OFFICER OF YOUR CHOSEN METHOD OF DISPOSAL.

N2-62

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
INFORMAL COMPLAINT FORM

RECEIVED
OCT 12 2017

Attachment I

Inmate Name Tony Gaskins Commitment # W52145 Incident Date 10/7/17
Institution SECC Housing Unit N2

CHECK OFF AREA OF CONCERN (one issue per form allowed)				
<input type="checkbox"/> HOUSING ASSIGNMENT/STATUS	<input type="checkbox"/> LAUNDRY	<input type="checkbox"/> PROGRAMS	<input checked="" type="checkbox"/> MAIL	<input type="checkbox"/> FOOD
<input type="checkbox"/> CLOTHING/LINEN EXCHANGE	<input type="checkbox"/> RELIGION	<input type="checkbox"/> PROPERTY	<input type="checkbox"/> VISITS	
<input type="checkbox"/> LEGAL EXCHANGE	<input type="checkbox"/> LIBRARY	<input type="checkbox"/> PHONE	<input type="checkbox"/> OTHER:	

State completely, but briefly, the single issue of concern and your requested resolution
Jose Delacruz mailed me in a 15 page appeal brief and the Mailroom Captain
illegally provided me with only five pages of the legal documents. This is
a clear violation of my First Amendment rights, and under Lloyd Matthews v.
John Marshall, et al., Suffolk Superior Court No. 1998-SUCV-6041, where Judge
Lopez enjoined the DOC from allowing prisoners to receive and share legal docu-
ments. If the remaining pages of the brief are damaged in any way, Captain Wil-
liams will be sued federally for mail tampering. I want the remainder of the legal
pages mailed to me.

List any previous steps you have taken to resolve your concern
N/A

(Use other side of page if more space is needed)

Inmate Signature Tony Gaskins Date 10/7/17

Note: If you follow instructions in preparing your request, it can be addressed more readily. Your complaint will be reviewed and replied to within ten (10) business days from the date of receipt.

DO NOT WRITE BELOW THIS LINE (Reserved for Staff Response)

Received By Cep/PA Date Received 10/16/17

DECISION

Resolution: Granted ☐ Partially Granted ☐ Denied ☒ Alternate Resolution Offered ☐ N/A ☐

Comments Legal documents can be mailed in but you must
adhere to the staff procedures w/ 5 pages mailed in
per envelope -

Decision By Cep/PA Date 10/16/17

*Denied informal complaints may be appealed to the Institution Grievance Coordinator within ten (10) business days.

**An inmate shall not be required to submit a step 1 informal complaint form prior to filing an emergency grievance, allegations of staff misconduct, or for allegations of sexual assault/abuse.

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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF CORRECTION

INMATE GRIEVANCE FORM

FORWARD TO INSTITUTIONAL GRIEVANCE COORDINATOR (IGC)

Name	GASKINS TONY	Grievance#	98533	Institution	SOUZA-BARANOWSKI CORRECTIONAL		
Commit No.	W52145	Housing	N2	Date Of Incident	20171017	Date Of Grievance	20171019
Informal filed	Yes						
Complaint	[REDACTED] mailed me in a 15 page brief and mailroom Caprain, Shelley Williams violated my First Amendment rights by confiscating 10 pages of it and only sending me 5 pages. This violates Lloyd Matthews v. John Marshall, et al., Suffolk Superior Court No. 1998-SUVC-6041, enjoined the DOC from not allowing inmates to receive and share legal documents.						
Remedy Requested	I want the remainder of the legal documents sent to me, or a lawsuit will be filed against all parties involved in this violation. And I want \$200.00 per day the documents are withheld from me.						
Staff Recipient	Hisman Bethany K CO I						
Staff Involved							
Signature							

RECEIPT BY INSTITUTIONAL GRIEVANCE COORDINATOR

Date Received	20171026	Decision Date	20171116
Signature	Tocci Thomas M CO II		
Final Decision	DENIED		
Decision	Your grievance is denied. The documents sent to you may have been legal in nature, however they are not deemed as legal mail as they were sent by a friend and not courts, lawyers, etc. According to SBCC procedure for the 481 Policy "Inmates may receive a maximum of five pages per day, except Sundays and Postal holidays, of a portion extracted, photocopied, or clipped from such items as an attachment to personal correspondence as long as the material is not otherwise prohibited by the 103 CMR 481, Inmate Mail." You will not receive monetary compensation.		
Signature		Date	

Denied grievances may be appealed to the Superintendent within 10 working days of Institutional Grievance Coordinators decision.

INMATE RECEIPT

Name	GASKINS TONY	Institution	SOUZA-BARANOWSKI CORRECTIONAL		
Commit No.	W52145	Grievance#	98533	Date Received	20171026
Signature	Hisman Bethany K CO I				

R.A. 195

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION**

INMATE GRIEVANCE FORM

FORWARD TO INSTITUTIONAL GRIEVANCE COORDINATOR (IGC)

Name GASKINS TONY Grievance# 98533 Institution SOUZA-BARANOWSKI CORRECTIONAL
Commit No. W52145 Housing N2 Date Of Incident 20171017 Date Of Grievance 20171019
Informal filed Yes
Complaint Jose Delacruz mailed me in a 15 page brief and mailroom Caprain, Shelley Williams violated my First Amendment rights by confiscating 10 pages of it and only sending me 5 pages. This violates Lloyd Matthews v. John Marshall, et al., Suffolk Superior Court No. 1998-SUVC-6041, enjoined the DOC from not allowing inmates to receive and share legal documents.
Remedy Requested I want the remainder of the legal documents sent to me, or a lawsuit will be filed against all parties involved in this violation. And I want \$200.00 per day the documents are withheld from me.
Staff Recipient Hisman Bethany K CO I
Staff Involved _____
Signature _____

RECEIPT BY INSTITUTIONAL GRIEVANCE COORDINATOR

Date Received 20171026 Decision Date _____
Signature _____
Final Decision _____
Decision _____
Signature _____ Date _____

Denied grievances may be appealed to the Superintendent within 10 working days of Institutional Grievance Coordinators decision.

INMATE RECEIPT

Name GASKINS TONY Institution SOUZA-BARANOWSKI CORRECTIONAL
Commit No. W52145 Grievance# 98533 Date Received 20171026
Signature Hisman Bethany K CO I

R.A. 146

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
INMATE GRIEVANCE APPEAL FORM
FORWARD TO SUPERINTENDENT**

Name	GASKINS TONY	Institution	SOUZA-BARANOWSKI CORRECTIONAL
Number	W52145	Housing	N2
		Appeal Date	20-NOV-17
		Date Of Grievance	19-OCT-17
		Appeal Received Date	22-NOV-17
Appeal	GRIEVANCE 98533:		
	The legal mail Jose Delacruz mailed me is permitted under the decree in Matthews v. Marshall, et al., Suffolk Superior Court, No. 1998-SUCV-6041. This crap that its deemed a publication is not going to fly in a court of law. So, continue holding onto the mail if you want. When its all said and done, you may need to hire some better legal adviser to help you in the future.		
Remedy Requested	I want the remainder of the documents being held, or I want \$100.00 per day I am denied the documents.		
Staff Recipient	Hisman Bethany K CO I		
Signature			

DECISION BY SUPERINTENDENT

Appeal Received Date	22-NOV-17	Decision Date	04-DEC-17	Decision	DENIED
Decision By	Silva Steven A SUPERINTENDENT				
Reasons	Your mail was handled per Department policy				
Signature		Date			

INMATE RECEIPT

Inmate's Name	GASKINS TONY	Institution	SOUZA-BARANOWSKI CORRECTIONAL
Number	W52145	Appeal Received Date	22-NOV-17
Staff Recipient	Hisman Bethany K CO I		
Superintendent's Signature			

R.A. 147

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF CORRECTION

INMATE GRIEVANCE FORM

FORWARD TO INSTITUTIONAL GRIEVANCE COORDINATOR (IGC)

Name	GASKINS TONY	Grievance#	98363	Institution	SOUZA-BARANOWSKI CORRECTIONAL		
Commit No.	W52145	Housing	N2	Date Of Incident	20170818	Date Of Grievance	20171006
Informal filed	Yes						
Complaint	My friend, [REDACTED] mailed me a decision and order in the federal civil case of her son, which I can receive and the mailroom is censoring my mail, specifically Captain Shelley Williams in violation of the First Amendment, Johnson v. Avery, 393 U.S. 183 (1969), and Lloyd Matthews v. John Marshall, et al., Suffolk Superior Court, Civil Action No. 1998-6041, where Judge Lopez enjoined the DOC from seizing documents shared by prisoners for legal advice and assistance. This is a judgement and decree you are in violation of by withholding the documents from me, and I intend to sue. So, have your legal department check this out before it goes before a judgment for contempt.						
Remedy Requested	I want the documents or a lawsuit will be filed, and I want monetary damages in the amount of \$500 per day I was denied the documents.						
Staff Recipient	Hisman Bethany K CO I						
Staff Involved							
Signature							

RECEIPT BY INSTITUTIONAL GRIEVANCE COORDINATOR

Date Received	20171010	Decision Date	20171116
Signature	Tocci Thomas M CO II		
Final Decision	DENIED		
Decision	Your grievance is denied. You must have approval from the Superintendent in order to correspond inmate to inmate. The use of a third party in order to correspond between inmate to inmate is not allowed. You will not receive monetary compensation.		
Signature		Date	

Denied grievances may be appealed to the Superintendent within 10 working days of Institutional Grievance Coordinators decision.

INMATE RECEIPT

Name	GASKINS TONY	Institution	SOUZA-BARANOWSKI CORRECTIONAL		
Commit No.	W52145	Grievance#	98363	Date Received	20171010
Signature.	Hisman Bethany K CO I				

R.A. 148

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF CORRECTION

INMATE GRIEVANCE FORM

FORWARD TO INSTITUTIONAL GRIEVANCE COORDINATOR (IGC)

Name GASKINS TONY Grievance# 100613 Institution SOUZA-BARANOWSKI CORRECTIONAL

Commit No. W52145 Housing P1 Date Of Incident 20180511 Date Of Grievance 20180512

Informal filed Yes

Complaint The withholding of all of my incoming personal mail violates 103 CMR 481.15. I have received no sort of notice for each piece of mail being illegally seized, read and stored by this administration. Therefore, there is no tracking of the mail unlawfully confiscated and held, and the actions are in violation of the Fourth Amendment and Article 14 of the Massachusetts Declaration of Rights. I also stand by my original Informal Complaint's content and incorporate them into this grievance.

Remedy requested Comply with 103 CMR 481.15 (a)-(g), or I want damages in the amount of \$100 for each letter, card, or picture you fail to allow into this facility for me to possess.

Staff recipient Hisman Bethany K CO I

Staff involved _____

Signature _____

RECEIPT BY INSTITUTIONAL GRIEVANCE COORDINATOR

Date Received 20180515 Decision Date 20180706

Signature Tocci Thomas M CO II

Final Decision DENIED

Decision Grievance is denied in an effort to provide for the safety and security of the institution, the employees, vendors, volunteers, inmates, and other stakeholders, there was a change to the incoming inmate mail process at SBCC. You will receive a photocopy of any authorized, non-privileged mail addressed to you. The original mail sent will be retained and provided upon request at the time you release from the DOC. The change in this procedure will not be applied to privileged mail at this time. The photocopying of non-privileged mail will continue and will not cease at this time. You will not receive any monetary compensation.

Signature _____ Date _____

Denied grievances may be appealed to the Superintendent within 10 working days of Institutional Grievance Coordinators decision.

INMATE RECEIPT

Name GASKINS TONY Institution SOUZA-BARANOWSKI CORRECTIONAL

R.A. 149

01.36

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
INFORMAL COMPLAINT FORM

Attachment I
APR 20 2018
BY: 0643

Inmate Name Tony Gaskins Commitment # W52145 Incident Date 4/12/18
Institution SBCC Housing Unit P-1

CHECK OFF AREA OF CONCERN (one issue per form allowed)

☐ HOUSING ASSIGNMENT/STATUS ☐ LAUNDRY ☐ PROGRAMS ☒ MAIL ☐ FOOD
☐ CLOTHING/LINEN EXCHANGE ☐ RELIGION ☐ PROPERTY ☐ VISITS
☐ LEGAL EXCHANGE ☐ LIBRARY ☐ PHONE ☐ OTHER: _____

State completely, but briefly, the single issue of concern and your requested resolution

My sister, [redacted] and niece, [redacted], mailed me two cards
that were contraband by the mailroom because it had glitter on it. There
is no such regulation that restricts cards with glitter on it, as well
as any item written with a glitter pen, to be deemed contraband. Nothing
in the mail regulations grants this administration such authority. This
is a clear violation of my First Amendment rights.

List any previous steps you have taken to resolve your concern.

This is my first time addressing this particular incident, although I
have a suit pending against all mailroom staff, as well as Captain Williams
and Superintendent Silva, as well as Vicki Pineda, Paralegal.

(Use other side of page if more space is needed)

Inmate Signature [Signature] Date 4/18/18

Note: If you follow instructions in preparing your request, it can be addressed more readily. Your complaint will be reviewed and replied to within ten (10) business days from the date of receipt.

DO NOT WRITE BELOW THIS LINE (Reserved for Staff Response)

Received By [Signature] Date Received APR 20 2018

DECISION

Resolution: Granted ☐ Partially Granted ☐ Denied ☒ Alternate Resolution Offered ☐ N/A ☐

Comments Glitter is contraband - according to Commissioner
Quelative - if you don't put contraband substance
through the copy machine as it will ruin the
paper

Decision By [Signature] Date 4/20/18

*Denied informal complaints may be appealed to the Institution Grievance Coordinator within ten (10) business days.

**An inmate shall not be required to submit a step 1 informal complaint form prior to filing an emergency grievance, allegations of staff misconduct, or for allegations of sexual assault/abuse.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
INMATE GRIEVANCE APPEAL FORM
FORWARD TO SUPERINTENDENT

Commit Name: GASKINS TONY

Commit #: W52145

Grievance #: 100612

Date Of Grievance: 20180512

Institution: MCI NORFOLK

Housing: P1

Appeal Date: 20180718

Appeal Received Date: 20180725

Current Institution: MCI NORFOLK

Current Housing: 1-3

Appeal The "directive" by the commissioner where my incoming personal mail is photocopied and kept in storage upon my release from custody is unconstitutional and violates G L c. 124, ~ 1(q); G.L.c. 125, ~ 12; 1st Amendment, Article 12, and 103 CMR 481.15.

Remedy Requested Provide me with my original mail or be sued. And I want \$200 per day my mail was unlawfully withheld from me that has sentimental value.

Staff Recipient Hisman Bethany K CO I

Signature _____

DECISION BY SUPERINTENDENT

Appeal Received Date 20180725

Decision Date 20180816

Decision DENIED

Decision By Silva Steven A SUPERINTENDENT

Reasons No merit

Signature _____ Date _____

INMATE RECEIPT

Inmate's Name GASKINS TONY

Institution MCI NORFOLK

Number W52145

Appeal Received Date 20180725

Staff Recipient Hisman Bethany K CO I

Superintendent's Signature _____

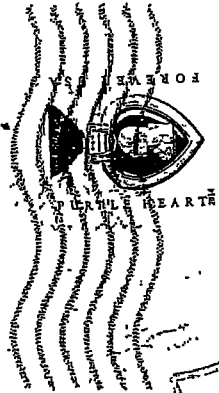
R.A. 151

ADDENDUM

MICHAEL D. HUNTER #W571001
MC1-NORFOLK / UNIT 3.3
P.O. BOX #43
NORFOLK, MA

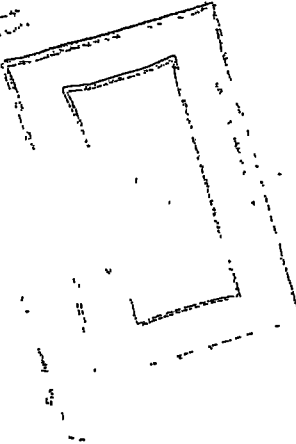
01050

62



BOSTON MA 021

18 APR 2000 PM 3:14



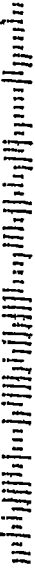
MR. TONY GASZINS

P.O. BOX #8000

SHIRLEY, MA

01464

01464-800000



41

Add. 1

APRIL 17, 2020

TE,

I'VE BEEN MEANING TO TOUCH BASE WITH YOU FOR A MINUTE NOW. I'VE BEEN WORKING WITH DEREK & WE'VE BEEN RECEIVING A LOT OF ASSISTANCE FROM EDDIE WRIGHT. LIKE YOU, I BELIEVE WE'RE IN A MUCH BETTER POSITION & WILL BE SUCCESSFUL WITH A RENEWED "TRO & PRELIMINARY INJUNCTION". HOWEVER, UNTIL THIS LOCKDOWN BURST IS OVER, I CAN'T ROOM THE YARD & GET SIGNATURES. ONCE I'M ABLE TO, I'LL MAKE SURE EVERYTHING IS FILED.

I ENDED UP RECEIVING A CONTRABAND SLIP FOR MORE THAN 5 PAGES OF DOCUMENTS YOU'D SENT. I'VE ALWAYS RECEIVED MORE THAN 5 PAGES OF INTERNET MATERIAL WITHOUT INCIDENT. I BELIEVE IT'S THE ADMIN FUCULING WITH US FOR SURE & EXERCISING OUR RIGHTS. I'VE ALREADY CHALLENGED THIS CONTRABAND SLIP FROM 4/9 WITH THE SGT. & HAVEN'T HEARD OR RECEIVED ANYTHING TO DATE. I'LL KEEP YOU POSTED.

PEACE,

TENNESSEE

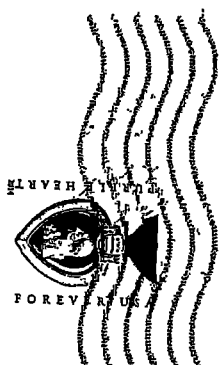
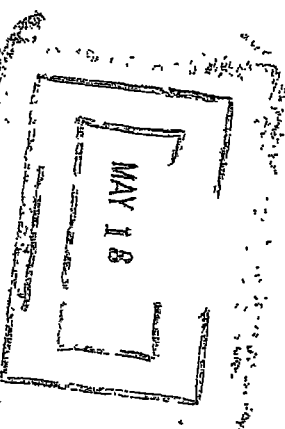
Add. 2

MICHAEL L. HUNTER #151001
MC1 NORFOLK / UNIT 3-3
P.O. BOX #43
NORFOLK, MA 02056

01464-800000

5

TONY GUSZINS
P.O. BOX #3000
SLIPPERY MA 01464



62

Add. 3

MAY 14, 2020

T.E.

LIKE YOU, I'VE BEEN GOING THROUGH A FEW THINGS MYSELF LATELY. I WROTE Supt. SILVA CONCERNING THE CONTRABAND MAIL SLIP (THE INJUNCTION MOTION YOU'D SENT). TO DATE, HE HASN'T RESPONDED TO ANYTHING! THE APPEAL TO CONTRABAND MAIL SLIP, PUBLIC RECORDS REQUEST, NOTHING! NOW I'VE RECEIVED A 2ND & FINAL NOTICE. I THINK I'M GOING TO CONTACT THE MAILROOM DIRECTLY TO SEE WHAT'S UP. IF NOTHING COMES OF IT, WE'LL USE THIS TO OUR ADVANTAGE WITH THE COURT TO SHOW THE DOC IS VIOLATING 481.20 "PARTY TO LEGAL ACTION..." I'LL KEEP YOU POSTED.

ON ANOTHER NOTE, WORD IS THEY'RE GOING TO START OPENING UP THE TIERS HERE WHICH MEANS I CAN RUN AROUND IN THE BLOCK AT LEAST ON A REGULAR BASIS & BORROW A TYPEWRITER IF NEED BE. I HAVE A COPY OF THE INTERROGATORIES I'D FILED PREVIOUSLY FOR YOU WHICH H. HANDLER REPLIED TO, BUT I CAN'T GET TO THEM TO MAIL TO YOU AS THEY'RE IN THE LAW LIBRARY (LAC). ONCE I CAN, I'LL MAIL THEM ASAP SO YOU HAVE THEM FOR YOUR RECORDS.

Add. 4